

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 21

RIN 2900-AN10

#### Post-9/11 GI Bill

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to establish regulations regarding a new educational assistance program for individuals who serve on active duty after September 10, 2001. The new program, known as the Post-9/11 GI Bill, was authorized by title V of the Supplemental Appropriations Act, 2008 (Post-9/11 Veterans Educational Assistance Act of 2008). These proposed regulations are designed to implement the provisions of the Post-9/11 Veterans Educational Assistance Act of 2008 that govern the Post-9/11 GI Bill.

**DATES:** Comments must be received on or before January 22, 2009.

**ADDRESSES:** Written comments may be submitted through [www.Regulations.gov](http://www.Regulations.gov); by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AN10—Post-9/11 GI Bill." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online at [www.Regulations.gov](http://www.Regulations.gov) through the Federal Docket Management System (FDMS).

**FOR FURTHER INFORMATION CONTACT:** Brandye R. Terrell, Regulation Development Team Leader (225C), Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420. Telephone: (202) 461-9822. (This is not a toll-free telephone number.)

#### SUPPLEMENTARY INFORMATION:

##### I. Post-9/11 GI Bill

This document proposes to amend VA's Vocational Rehabilitation and Education regulations in 38 CFR part 21 by adding a new subpart P and updating

subparts B, C, D, G, K, and L to implement the provisions of the "Post-9/11 Veterans Educational Assistance Act of 2008," Public Law 110-252, title V, which established a new educational assistance program. Many of the provisions of the new program, known as the "Post-9/11 GI Bill," are codified in chapter 33 of title 38, U.S.C. Chapter 33 provides guidance on the administration of the Post-9/11 GI Bill educational assistance program. The new program becomes effective on August 1, 2009. VA intends to use these proposed regulations to govern and administer educational assistance allowances payable under the Post-9/11 GI Bill. The following paragraphs provide a brief explanation of how each section of new chapter 33 affects the provisions of educational assistance under the Post-9/11 GI Bill, with references to the respective proposed rules concerned.

##### Section 3301. Definitions

Section 3301 defines certain terms relevant to the Post-9/11 GI Bill. VA proposes to define active duty, advance payment, educational assistance, enrollment period, entry level or skill training, established charges, institution of higher learning, interval, lump sum payment, program of education, pursuit, and transferor based on statute or existing regulations for sections authorized under 38 U.S.C. 3323 to govern the administration of the program.

The term "academic year" is used in section 3313 to set a period of time for which VA may pay the maximum book stipend of up to \$1,000, and in section 3317 to set a period of time for which colleges and universities (who voluntarily agree to enter into an agreement with VA) must provide specific information. VA proposes to define academic year to mean a span of time of not more than 12 months during which the institution of higher learning offers periods of instruction and includes all divisions of the school year as defined in § 21.4200(b)(2) through (b)(5). If an institution of higher learning has an academic year lasting longer than 12 months, VA will consider the academic year for that institution to be August 1st of each calendar year through July 31st of the subsequent calendar year.

"Program of education" as defined in 38 U.S.C. 3301 and 3452(b) includes any unit course or combination of courses or subjects pursued by an individual. In several sections of existing regulations governing the administration of other educational assistance programs, the terms "course" and "program of

education" have often been used synonymously. Using the terms interchangeably for purposes of 38 U.S.C. chapter 33 could be confusing to the reader. Section 3313 of title 38, U.S.C., provides a formula for determining entitlement charge. The formula includes the term "course." The term, as used in this section is not interchangeable with program of education. The term "course" is also used in 38 U.S.C. 3314 governing payment of tutorial assistance. In this instance, the term "course" is specifically required to be part of an approved program of education. The use of the term "course" in these instances requires that VA clearly distinguish between course and program of education. VA proposes to define the term "course" to mean a unit of instruction required for an approved program of education that provides the individual with the knowledge and skills necessary to meet the requirements of the selected educational objective.

Section 3313 specifically excludes payment of the monthly housing allowance to individuals pursuing a program of education offered through distance learning. VA proposes to define the term "distance learning" to mean the pursuit of a program of education via distance education as codified in Department of Education statute 20 U.S.C. 1003(6).

Section 3313(f)(4) provides VA with a formula for calculating entitlement charge for eligible individuals pursuing training at half-time or less. The formula requires that VA divide the number of course hours pursued by an individual by the number of course hours required to be full-time at the institution of higher learning. The result of the formula is a percentage that will be used to determine entitlement charge. As this formula is unique to the new program, VA proposes to use the term "rate of pursuit" to identify the result of the calculation.

Terms specific to the Post-9/11 GI Bill are included in proposed § 21.9505.

##### Section 3311. Educational Assistance for Service in the Armed Forces Commencing on or After September 11, 2001: Entitlement

Section 3311 specifies service requirements for establishing eligibility for educational assistance under chapter 33, the qualifying categories of discharges and releases, and the types of service that will not be considered active duty for purposes of establishing eligibility. Rules regarding these statutory provisions are included in proposed §§ 21.9505 and 21.9520.

*Section 3312. Educational Assistance: Duration*

Section 3312 provides a maximum of 36 months (or its equivalent for part-time training) of educational assistance to individuals meeting the eligibility requirements contained in section 3311, to be used during the individual's period of eligibility. This section incorporates a 48-month limitation in 38 U.S.C. 3695 on the total period in which an individual can receive educational assistance by combining two or more educational assistance programs administered by VA. In addition, section 3312 provides that there will be no charge against an eligible individual's entitlement to educational assistance under chapter 33 if the individual discontinued training because he or she was ordered to active duty under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304, was ordered to a new duty location, or was required to perform an increased amount of work in his or her unit, and failed to receive credit toward the completion of his or her educational, professional, or vocational objective. The period for which receipt of educational assistance allowance is not charged against an individual's entitlement shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or lost training time. Rules regarding these statutory provisions are included in proposed §§ 21.9550 and 21.9560(d).

*Section 3313. Educational Assistance: Amount; Payment*

Section 3313 provides that eligible individuals may receive educational assistance for pursuit of any program of education approved for purposes of 38 U.S.C. chapter 30 and offered by an institution of higher learning. The maximum amount of educational assistance payable for an individual's pursuit of an approved program of education will depend, in part, upon the individual's length of creditable active duty service as shown in the following chart:

Service requirements (aggregate service on active duty after 9/10/01)	Maximum percentage of amounts payable
At least 36 months <sup>1</sup> .....	100
At least 30 continuous days (Must be discharged due to service-connected disability)	100
At least 30 months, but less than 36 months <sup>1</sup> .....	90
At least 24 months, but less than 30 months <sup>1</sup> .....	<sup>3</sup> 80

Service requirements (aggregate service on active duty after 9/10/01)	Maximum percentage of amounts payable
At least 18 months, but less than 24 months <sup>2</sup> .....	<sup>3</sup> 70
At least 12 months, but less than 18 months <sup>2</sup> .....	60
At least 6 months, but less than 12 months <sup>2</sup> .....	50
At least 90 days, but less than 6 months <sup>2</sup> .....	40

<sup>1</sup> Includes entry level and skill training.

<sup>2</sup> Excludes entry level and skill training.

<sup>3</sup> If the service requirements are met at both the 80 and 70 percentage level, the maximum percentage of 70 must be applied to amounts payable.

Section 3313 directs VA to charge an individual's entitlement to educational benefits under chapter 33 for payments of educational assistance (established charges; monthly housing allowance; lump sum for books, supplies, equipment, and other educational costs). An eligible individual, other than an individual on active duty, is entitled to receive educational assistance equal to the amount of the school's established charges, up to the maximum amount of established charges regularly charged to full-time, undergraduate, in-State students by the public institution of higher learning having the highest rate of regularly-charged established charges in the State in which the individual is enrolled, as well as a prorated amount for books, supplies, equipment, and other educational costs (not to exceed \$1,000 for an entire academic year), which are paid in a lump sum for the quarter, semester, or term. In addition, an individual, other than an individual on active duty, whose rate of pursuit for a program of education (distance learning programs are specifically excluded by 38 U.S.C. 3313(c)(1)(B)) is greater than half-time is entitled to a monthly housing allowance equal to the amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member of the military with dependents in pay grade E-5, using the ZIP code area wherein all, or a majority, of the institution of higher learning in which the individual is enrolled is located. The actual amounts payable to, or on behalf of, an eligible individual must be multiplied by the maximum percentage correlating to the individual's creditable length of service (as shown in the chart above). Additionally, the actual lump sum amount payable for books, supplies, equipment, and other educational costs must be multiplied by the percentage correlating to the individual's rate of pursuit if the individual's rate of pursuit is 50 percent or less.

An individual on active duty is eligible to receive educational assistance equal to the amount of the school's established charges or the portion of established charges not covered by military tuition assistance under 10 U.S.C. 2007(a) or (b), whichever is less.

In the event that an individual is pursuing an approved program of education at more than one institution of higher learning, VA proposes to use the primary institution of higher learning (institution from which degree will be granted) to determine the in-State maximum for established charges and the monthly housing allowance. If the individual is only pursuing distance education courses at the primary school, VA proposes to determine the monthly housing allowance payable using the ZIP code of the institution of higher learning where resident courses are being pursued.

While the statute provides that eligible individuals may receive educational assistance for pursuit of any program of education that is approved for the purposes of 38 U.S.C. chapter 30 and offered by an institution of higher learning as defined in 38 U.S.C. 3452(f), it does not address the maximum amounts payable for individuals pursuing training in a foreign country. The statutory definition of institution of higher learning includes educational institutions that are not located in States but offer courses leading to a standard degree (or its equivalent) that is recognized by the Secretary of the Department of Education (or comparable official) of the country or other jurisdiction in which the institution is located. VA proposes to pay individuals in pursuit of an approved program of education located at a foreign branch of a State-side institution in the same manner as in-State students using the maximum amounts payable for the State in which that institution's main campus is located. VA also proposes to set the maximum amount of established charges payable for individuals in pursuit of an approved program of education at a foreign institution at the average amount of established charges regularly charged full-time undergraduate in-State students by public institutions of higher learning throughout the United States during the preceding academic year. Further, VA proposes to set the maximum monthly housing allowance payable for individuals in pursuit of an approved program of education at a foreign institution at the average monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member of the military with

dependents in pay grade E-5 residing in the continental United States.

Section 3313(d)(3) requires VA to establish regulations for determining the number of months of entitlement of an individual to chapter 33 educational assistance that are chargeable based on payments made to the individual for pursuit of an approved program of education. Except for lump sum stipends for books, supplies, equipment, and other educational costs that an individual receives for a certified period of enrollment, VA proposes to charge entitlement based on rate of pursuit and enrollment dates similar to the method used to calculate entitlement charge under 38 U.S.C. chapter 30. VA will compute the individual's rate of pursuit from the beginning date of the educational assistance award to the ending date. If the individual's rate of pursuit is half-time or less, VA is required to calculate the amount of entitlement to charge as a percentage of a month equal to the number of course hours the individual is pursuing divided by the number of course hours required for full-time pursuit at the institution of higher learning. For the purpose of consistency in determining the amount of entitlement to charge, VA proposes to use the same formula to calculate every individual's rate of pursuit, up to and including for full-time training.

The amount payable to an individual for a lump sum for books, supplies, equipment, and other educational costs (also referred to as the book stipend) is limited to up to \$1,000 each academic year. The book stipend must be paid proportionally based on the fraction of the academic year that term, quarter, or semester the individual is attending represents. If the individual is only eligible to receive a lump sum payment for the book stipend for the certified period of enrollment, VA proposes to limit the entitlement charge to one day for each \$33 received by the individual, with any remaining amount rounded to the nearest amount evenly divisible by \$33. Individuals who receive payment of established charges or the monthly housing allowance will not receive an additional entitlement charge for the book stipend. The formula used to determine entitlement charge for the book stipend will only be used if the individual does not receive any other payment under 38 U.S.C. 3313. Using this formula would be most advantageous to the individual because it would allow the individual to receive educational assistance for books, supplies, equipment, and other educational costs while maximizing entitlement use.

A servicemember pursuing an approved program of education would be entitled to receive the lesser of: (1) the amount of the school's established charges which similarly circumstanced nonveterans are required to pay; or (2) the portion of the established charges not covered by military tuition assistance.

VA would pay the appropriate amount of established charges as a lump sum sent directly to the institution of higher learning on the individual's behalf. VA would make all other payments directly to the individual. Rules regarding these provisions are included in proposed §§ 21.9560, 21.9640, and 21.9680.

#### *Section 3314. Tutorial Assistance*

Section 3314 permits an eligible individual in pursuit of an approved program of education to receive tutorial assistance, subject to the conditions applicable to veterans under 38 U.S.C. 3492, if the instructor of the course certifies that assistance is essential to correct a deficiency, and the course is required for satisfactory pursuit of the program of education. Section 3492 requires that the individual must be in pursuit of a program of education on at least a half-time basis. Chapter 33 does not recognize the training times used in the administration of other educational assistance programs. Therefore, VA proposes to permit an individual with a rate of pursuit of at least 50 percent to qualify for tutorial assistance as that percent represents a course load that is equivalent with half-time training in other educational assistance programs. An individual who receives tutorial assistance would not be charged entitlement for chapter 33 educational assistance. An individual's receipt of tutorial assistance would be limited to \$100 per month for up to 12 months or up to a maximum of \$1,200. Rules regarding these provisions are included in proposed §§ 21.9560(d) and 21.9685.

#### *Section 3315. Licensure and Certification Tests*

Section 3315 permits an eligible individual to receive reimbursement for the actual cost of taking one licensing or certification test on or after August 1, 2009, up to a maximum of \$2,000, and no charge would be made against the individual's entitlement to chapter 33 educational assistance. Rules regarding this provision are consistent with statute and existing regulations for sections authorized under 38 U.S.C. 3323 to govern the administration of the program and are included in proposed §§ 21.9560, 21.9625, 21.9665, and 21.9680.

#### *Section 3316. Supplemental Educational Assistance: Members With Critical Skills or Specialty; Members Serving Additional Service*

Section 3316 provides that the Secretary of the military department concerned, pursuant to regulations prescribed by the Secretary of Defense, may increase the amount of educational assistance payable to an individual who is entitled to receive: (1) an increase ("kicker") based on a skill or specialty in which there is a critical shortage of personnel, for which there is difficulty recruiting, or, in the case of critical units, for which there is difficulty in retaining personnel; or (2) a supplemental educational assistance increase based on additional years of service as authorized by subchapter III of 38 U.S.C. chapter 30. These increases are at the sole discretion of the Secretary of the military department concerned.

Section 3316 provides that the amount of the increased or supplemental educational assistance payable will be equal to the monthly amount of the increase authorized under 38 U.S.C. 3015(d) or 3022, respectively. Those sections require that the monthly amount of the additional assistance be reduced for individuals not pursuing full-time training. Section 3316 does not provide a method for adjusting the amount of the individual's additional educational assistance; therefore, VA proposes to proportionally reduce the monthly amount of the increase ("kicker") or supplemental educational assistance payable under the Post-9/11 GI Bill by the percentage corresponding to the individual's rate of pursuit as determined by dividing the number of course hours the individual is pursuing by the number of course hours required for full-time pursuit. Any amount payable under this section will be paid as an increase to the monthly housing allowance, but can only be paid if the individual is eligible for the housing allowance for that term, quarter, or semester. Rules regarding these provisions are included in proposed §§ 21.9525, 21.9555, 21.9650, and 21.9655.

#### *Section 3317. Public-Private Contributions for Additional Educational Assistance*

Section 3317 establishes the "Yellow Ribbon G.I. Education Enhancement Program" (referred to as the "Yellow Ribbon Program"), which permits an institution of higher learning, at the school's option, to enter into an agreement with VA allowing the two parties to provide matching funds to cover a portion of the outstanding

amount of established charges not covered under any other provision of 38 U.S.C. chapter 33. VA would match each dollar funded by the school, but the combined amounts may not exceed the remainder of the full cost of the school's established charges. This program would only be available to individuals entitled to the 100 percent benefit rate (based on service requirements) who are pursuing training at an institution of higher learning located in the United States or at a branch of such institution that is located outside the United States.

VA proposes to enter into an agreement with any institution of higher learning located in the United States seeking to participate in the Yellow Ribbon Program. For the sake of equality, VA proposes to require institutions to agree to—

- Provide contributions to eligible individuals who apply for such program at that institution (in a manner prescribed by the institution) on a first-come-first-served basis, regardless of the rate at which the individual is pursuing training (*i.e.*, full-time versus less than full-time), in any given academic year;
- Make contributions toward the program on behalf of the individual in the form of a waiver;
- State the maximum number of individuals for whom contributions will be made in any given academic year; and
- Waive the same percentage of unmet established charges for all eligible individuals in any given academic year.

Additionally, VA proposes to require each participating institution of higher learning to commit to provide contributions for eligible individuals for the entire academic year specified in the agreement.

The most current list of colleges and universities participating in the Yellow Ribbon Program would be made available at VA's GI Bill Web site at <http://www.gibill.va.gov>. The list would include specific information regarding each school's agreement with VA. Proposed rules regarding the Yellow Ribbon Program provision are provided in § 21.9700.

*Section 3318. Additional Assistance: Relocation or Travel Assistance for Individual Relocating or Traveling Significant Distance for Pursuit of a Program of Education*

Section 3318 permits an individual eligible for educational assistance under this chapter to receive a one-time-only payment of \$500 if the individual resides in a county (or similar entity utilized by the Bureau of the Census)

with less than 7 persons per square mile (as determined by the most recent decennial Census) and, in order to pursue a program of education under the Post-9/11 GI Bill, either: (1) Relocates at least 500 miles; or (2) travels by air to physically attend school if no other method of transportation is available due to an absence of roads or other infrastructure. If the individual requests payment for the rural relocation benefit, VA proposes to confirm that the individual physically relocated at least 500 miles by using a commonly available internet search engine for mapping, using the individual's resident address as the beginning point and the address of the institution of higher learning as the ending point. If the individual indicates that he or she was required to travel by air to reach the institution of higher learning for which he or she is enrolled, VA proposes to verify that the individual actually traveled by air by requesting that the individual provide an airline receipt for travel with a departure and destination airport within reasonable commuting distance from the individual's home of residence and the institution of higher learning, respectively.

Section 3318 also authorizes VA to accept an individual's DD Form 214 (Certification of Release or Discharge), the individual's most recent Federal income tax return, or other evidence as prescribed by regulation as proof of residence. VA proposes to accept the following additional documents as proof of residence: The most recent State income tax return, a rental/lease agreement, a mortgage document, or a current real property assessment. VA further proposes to accept the above-mentioned documents (excluding the DD Form 214) in the name of the transferor or, in the case of a child, a parent in the event that a dependent eligible for assistance under this program as a result of being granted transferred entitlement cannot personally produce adequate proof of residence because he or she lives with the transferor or, in the case of a child, a parent.

In view of the nature of this one-time-only payment, VA proposes to make no charge against the individual's entitlement to chapter 33 educational assistance. Rules regarding this provision are included in proposed §§ 21.9660 and 21.9680(c).

*Section 3319. Authority to Transfer Unused Education Benefits to Family Members*

Section 3319 provides that the Secretary of Defense may authorize the

Secretary of each military department, at such Secretary's sole discretion, to permit individuals who meet certain service requirements and are eligible for educational assistance under the Post-9/11 GI Bill to transfer up to 36 months of their entitlement to educational assistance to a designated dependent or dependents. The Secretary of the Defense may limit the number of months of entitlement that may be transferred, but in no case may the Secretary limit the number of months to less than 18 months.

The statute further provides the—

- Eligibility criteria for both the individual transferring the entitlement and the dependent;
- Administrative provisions (including designations, revocations, and modifications of transferred entitlement);
- Special provisions in the event of an overpayment of educational assistance allowance; and
- Limitations on using transferred entitlement as marital property, or the asset of a marital estate, subject to division in a divorce or other civil proceeding.

Subject to the transferor's (individual who transfers the entitlement) 15-year period of eligibility, a spouse is entitled to use transferred entitlement in the same manner as the transferor and receive the same amounts that would be payable to the transferor. A child is entitled to use transferred entitlement in the same manner as the transferor and receive the same amounts that would be payable to the transferor as if the transferor was not on active duty. The child is not subject to the transferor's 15-year period of eligibility nor may the child use any transferred entitlement after reaching the age of 26 years. A spouse may use the transferred entitlement for pursuit of the requirements of a secondary school diploma or equivalency certificate; a child can only do so if he or she has reached 18 years of age.

For consistency among all educational assistance programs administered by VA, VA proposes to adopt the provisions of existing regulations governing transfer of entitlement in the event that section 3319 does not address such provisions. Rules regarding the transfer of entitlement provisions are included in proposed §§ 21.9530, 21.9570, 21.9625, 21.9635, and 21.9570.

*Section 3321. Time Limitation for Use of and Eligibility for Entitlement*

Section 3321 provides that an individual's period of eligibility for educational assistance will generally terminate 15 years from the last date of

discharge or release from active duty of at least 90 continuous days. However, if the individual is eligible for educational assistance under this program due to a discharge or release from active duty of at least 30 days for a service-connected disability, the individual's period of eligibility will terminate effective 15 years from his or her date of discharge or release from active duty.

Section 3321 does not address the period of eligibility for individuals who established eligibility based on a minimum of 90 aggregate days of active duty service who do not have a period of service consisting of 90 continuous days. VA proposes to establish a 15-year period of eligibility for these individuals beginning on the date of discharge or release from active duty for the last period of service used to meet the minimum service requirements under chapter 33.

If an individual's eligibility is established as a result of a corrective action to an individual's military records by a competent military authority, the individual's period of eligibility will terminate effective 15 years from the date of the corrective action. This section also provides that VA, under certain conditions, will extend an individual's period of eligibility in the event the individual was captured and forcibly detained by a foreign government or power, or was prevented from initiating or completing the chosen program of education within the original period of eligibility because of a physical or mental disability that did not result from the individual's willful misconduct.

Rules regarding these provisions are included in proposed §§ 21.9530 and 21.9535.

#### *Section 3322. Bar to Duplication of Educational Assistance Benefits*

Section 3322 prohibits concurrent receipt of educational assistance under the Post-9/11 GI Bill and any other educational assistance programs administered by VA (excluding the receipt of supplemental educational assistance, or an increase ("kicker") payable as a result of eligibility under the Montgomery GI Bill—Active Duty program, or the Montgomery GI Bill—Selected Reserve program). If an individual is eligible for more than one program administered by VA, the individual must elect under which program he or she wishes to receive educational assistance. VA proposes to amend §§ 21.3022, 21.4022, 21.5022, 21.7143, and 21.7642 to include a reference to chapter 33 of title 38, U.S.C., and add a provision prohibiting duplication of educational assistance in

§ 21.9690 of the proposed subpart P. Updating each of the aforementioned sections and adding § 21.9690 will make it clear to the reader that an individual may not concurrently receive payment for training under the Post-9/11 GI Bill and any other educational assistance program administered by VA.

Section 3322 also prohibits a period of service counted for purposes of repayment of an education loan under chapter 109 of title 10, U.S.C., from being counted as a qualifying period of service for eligibility under the Post-9/11 GI Bill. In addition, it prohibits an individual who serves in the Selected Reserve from receiving credit for that service under more than one of the following educational assistance programs: the Post-9/11 GI Bill, the Montgomery GI Bill—Active Duty program, the Montgomery GI Bill—Selected Reserve program, or the Reserve Educational Assistance Program. These restrictions are included under the definition of active duty in proposed § 21.9505.

#### *Section 3323. Administration*

Section 3323 requires VA to adhere to the provisions of section 3034(a)(1), which includes the provisions of 3470, 3471, 3474, 3476, 3482(a), 3483, and 3485 of title 38, U.S.C., and subchapters I and II (with the exception of secs. 3680(c) 3680(f), and 3687) of chapter 36 of the same title in administering the Post-9/11 GI Bill in the instance that 38 U.S.C. chapter 33 does not address the subject matters covered under those sections.

Some of the sections listed in the preceding paragraph generally apply to all educational assistance programs administered by VA and, therefore, exist in current VA regulations. VA proposes to revise 38 CFR 21.1029, 21.1031, and 21.1032 to include a reference to the proposed subpart P and update authority citations as necessary. Furthermore, VA proposes to revise multiple sections in 38 CFR part 21, subpart D to do one or more of the following:

- Update the authority citations to include chapter 33 authority;
- Amend the referenced sections to include chapter 33; and
- Remove references to chapter 34 because that educational assistance program expired on December 31, 1989.

In addition, 38 U.S.C. 501, 503, 511, 512, 513, 5101, 5103, 5103A, and 5113 (applicable generally with respect to benefits administered by VA) are applicable to the administration of the Post-9/11 GI Bill. Sections 501, 503, 511, 512, and 513 include provisions related to VA's authority to prescribe

rules and regulations to carry out the laws administered by the Department, determinations on administrative errors or equitable relief, finality of decisions by the Secretary, the Secretary's delegation of authority, and the Secretary's authority to enter into certain contracts or agreements. Sections 5101, 5103, and 5103A include provisions relating to the filing of claims for benefits, VA's duty to notify claimants of required information and evidence, and VA's duty to assist claimants in obtaining benefits, which are applicable to any individual applying for any benefit administered by the Secretary. Section 5113(a) sets forth effective date provisions that are applicable, specifically, to education benefits under chapters 30, 31, 32, 34, and 35 of title 38, U.S.C. We note that section 5113 was not amended to include chapter 33 in this list. However, we believe Congress intended that the effective date provisions applicable to other VA educational assistance programs should be applied as well to educational assistance under the Post-9/11 GI Bill, chapter 33. We believe there is sufficient authority provided to the Secretary under section 3323(c)(1) of title 38, U.S.C., which states that "the Secretary shall prescribe regulations for the administration of this chapter," to enable VA to prescribe regulations consistent with other educational assistance program regulations that are based on the authority provided in section 5113. Accordingly, section 5113 is listed as an authority in several places (along with section 3323(c)) that relate to effective dates.

Section 3485 contains provisions for the administration of the work-study allowance. That section requires that individuals be pursuing training in an approved program of education at a rate of at least three-quarters of that required of a full-time student. Chapter 33 does not recognize the training times used in the administration of other educational assistance programs. Therefore, VA proposes to permit individuals with a rate of pursuit of at least 75 percent to qualify for work-study allowance as that percent represents a course load that is equivalent with three-quarter time training in other educational assistance programs. Rules regarding this provision are included in § 21.9670.

Sections 3685 and 3690 of title 38, U.S.C., include provisions on overpayments to individuals in receipt of educational assistance and overcharges by educational institutions, discontinuance of allowances, examination of records, and misleading statements. Although these provisions are applicable to chapter 33 benefits, VA

proposes to clarify when the individual and when the institution of higher learning will be liable for any overpayments. Further, VA proposes to determine the amount of an overpayment for an individual in receipt of chapter 33 benefits as follows—(1) An individual who does not complete all courses in the certified period of enrollment for which he or she received payment, and who does not substantiate mitigating circumstances for not completing such enrollment, will be charged an overpayment equal to the amount of all educational assistance paid for that certified period of enrollment.

(2) An individual who does not complete all courses in the certified period of enrollment, but who substantiates mitigating circumstances for not completing such courses, will be charged an overpayment equal to the prorated amount of educational assistance to which he or she is entitled.

(i) VA will determine the prorated amount of the established charges by dividing the amount the individual was paid by the number of days in the certified enrollment period, and multiplying the result by the number of days from the beginning date of the enrollment period through the last date of attendance. The result of this calculation will equal the amount the individual is due. The difference between the amount of educational assistance paid and the amount of educational assistance the individual is due will be established as an overpayment.

(ii) VA will determine the prorated amount of the monthly housing allowance by determining the amount the individual was entitled to while enrolled and subtracting that amount from the total amount paid. The difference between the amount of the monthly housing allowance paid and the amount of the monthly housing allowance the individual is due will be established as an overpayment.

(iii) Individuals who have substantiated mitigating circumstances will not be charged an overpayment for the lump sum payment for books, supplies, equipment, and other educational costs (“book stipend”).

Rules regarding these provisions are included in § 21.9695.

#### *Section 3324. Allocation of Administration and Costs*

Section 3324 provides that the Secretary of Veterans Affairs shall administer the Post-9/11 GI Bill and directs that educational assistance payments under this program be made from funds appropriated to, or

otherwise made available to, VA for the payment of readjustment benefits. VA is not proposing regulations for the provisions included in this section.

#### **II. Applicability of the Post-9/11 GI Bill to Individuals Under the Montgomery GI Bill Program**

Certain individuals who, as of August 1, 2009, are currently making contributions for or are already entitled to benefits under the provisions of 38 U.S.C. chapter 30, or would have been entitled to chapter 30 benefits if they had not declined participation upon entry into active duty service; or who are entitled to benefits under chapter 107, 1606, or 1607 of title 10, U.S.C.; and who, as of the date of election, meet the eligibility requirements under 38 U.S.C. chapter 33, would be eligible to elect participation in the chapter 33 program. The individual would have to make an irrevocable election of chapter 33 by relinquishing entitlement to benefits under either chapter 30 of title 38, U.S.C., or chapter 107, 1606, or 1607 of title 10, U.S.C. If the individual was making contributions under chapter 30 at the time of the election, the contributions would cease as of the month following.

An individual who relinquishes entitlement under the provisions of chapter 30 and, as of August 1, 2009, had used entitlement but retains unused entitlement under that chapter would have a number of months of entitlement available to him or her under chapter 33 that equals the number of unused months remaining to him or her under chapter 30, including any months of transferred chapter 30 entitlement revoked by the individual in an irrevocable election. An individual who exhausted all chapter 30 entitlement prior to August 1, 2009, may not elect chapter 33 by relinquishing entitlement under chapter 30 (as that individual is no longer entitled under chapter 30). Individuals who are entitled to but have not used chapter 30 benefits, individuals who would have been eligible under chapter 30 had they not declined participation, and individuals who are making contributions towards chapter 30 and who have not used any entitlement under chapter 30 would be eligible to receive 36 months of entitlement under chapter 33.

If an eligible individual requests educational assistance for a program of education that is not available to the individual under the provisions of 38 U.S.C. chapter 33 (e.g., on-the-job training, flight training, reimbursement of national test fees), but is available under the chapter the individual relinquished, VA would provide

educational assistance at the rate payable under the provisions of the relinquished chapter to the eligible individual for pursuit of any program of education that meets the approval criteria under—

(1) 38 U.S.C. chapter 30, if the individual was eligible under that chapter; or

(2) 10 U.S.C. chapter 1606, if the individual was eligible under that chapter; or

(3) 10 U.S.C. chapter 1607, if the individual was eligible under that chapter.

If an individual receives educational assistance for a program of education under the provisions of a relinquished chapter, the entitlement charge would be made against the individual's entitlement under chapter 33.

An individual eligible for educational assistance under chapter 33 by reason of relinquishing eligibility under another educational assistance program and, at the time of the chapter 33 election, the individual was also eligible for supplemental educational assistance under subchapter III of chapter 30 of title 38, U.S.C., a Montgomery GI Bill—Active Duty kicker provided under 38 U.S.C. 3015(d), or a Montgomery GI Bill—Selected Reserve kicker provided under 10 U.S.C. 16131(i), will remain entitled to such increased amount(s) under 38 U.S.C. chapter 33. The increased amount(s) would be paid to the individual as a lump sum in an amount equal to the quarter, semester, or term, as applicable, equivalent of the monthly amount to which the individual was entitled at the time of the election of chapter 33.

We propose regulations providing that an eligible individual who makes an irrevocable election to receive educational assistance under chapter 33 by relinquishing entitlement under section 3011 or 3012 of chapter 30 may be entitled to receive a refund of the amount of his or her individual contributions to chapter 30 up to \$1,200. The refund of contributions may only be paid to the individual who made the contributions and as an increase to the monthly housing allowance payable under § 21.9640(b)(1)(ii) or (b)(2)(ii) at the time his or her entitlement exhausts.

Rules regarding these statutory provisions are included in proposed §§ 21.9550, 21.9560, 21.9590, 21.9645, 21.9650(b), and 21.9655.

#### **III. Nonsubstantive Changes**

Public Law 98–525 (Department of Defense Authorization Act, 1985) terminated eligibility for persons receiving educational assistance under

chapter 34, effective December 31, 1989. For historical purposes, VA did not immediately update existing regulations to remove references to chapter 34 upon its expiration. However, VA proposes to remove references to chapter 34 in any section that is being updated for the Post-9/11 GI Bill and currently references chapter 34.

#### *Paperwork Reduction Act of 1995*

This proposed rule contains no new collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (“Act”). The existing collections of information under the Paperwork Reduction Act referenced in this proposed rule are approved under one of the following Office of Management and Budget (OMB) control numbers:

- 2900–0154—Application for VA Education Benefits.
- 2900–0073—VA Enrollment Certification.
- 2900–0074—Request for Change of Program or Place of Training.
- 2900–0156—Notice of Change in Student Status.
- 2900–0465—Student Verification of Enrollment.

In 38 CFR 21.9680(c), there are provisions requiring individuals to submit a request for the rural relocation benefit in writing. However, those provisions do not constitute a collection of information under the Act because VA anticipates that information will be collected from fewer than 10 persons annually. The rural relocation benefit is only available to individuals relocating more than 500 miles or by air from a county (or similar entity utilized by the Bureau of the Census) with less than 7 persons per square mile.

#### *Unfunded Mandates*

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

#### *Executive Order 12866 and Congressional Review Act*

This is an economically significant regulatory action under Executive Order 12866 and constitutes a major rule under the Congressional Review Act.

Executive Order 12866 directs agencies to assess all costs and benefits

of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a “significant regulatory action” requiring review by OMB as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of entitlement recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

VA has examined the economic, interagency, budgetary, legal, and policy implications of this proposed rule and has concluded that it is a significant regulatory action under Executive Order 12866 because it is likely to result in a rule that may have an annual effect on the economy of \$100 million or more and may raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. This proposed rule is also a major rule under the Congressional Review Act because it is likely to result in an annual effect on the economy of \$100 million or more.

VA has attempted to follow OMB circular A–4 to the extent feasible in this analysis. The circular first calls for a discussion of the need for the regulation. The Post-9/11 GI Bill was established to provide educational assistance to members of the Armed Forces who serve on active duty after September 10, 2001. The preamble above discusses the need for the regulation in more detail.

The impact of this regulation is primarily to the federal budget. Eligible individuals may receive an educational assistance allowance for established charges not to exceed the highest amount charged full-time in-State undergraduate students by the most expensive public institution in the State where the student is enrolled (or the national average of the most expensive in-State public institutions for individuals training at a foreign institution not associated with an

institution located inside the United States), a monthly housing allowance up to the monthly amount payable under section 403 of title 37, United States Code, for a member with dependents in pay grade E–5 residing in the military housing area that encompasses all or the majority portion of the ZIP code area in which the institution is located, and a book stipend of up to \$1,000 each academic year. Individuals may also qualify for a work-study allowance, tutorial assistance, reimbursement of a licensing or certification test, and a rural relocation benefit. Individuals eligible for 100 percent of the benefit may also receive additional funds under the Yellow Ribbon Program to cover established charges not otherwise covered under chapter 33.

The effective date of the chapter 33 program is August 1, 2009; therefore, full year benefit costs begin in FY 2010. VA estimates the benefit cost of the program will be \$1.2 billion in FY 2009, approximately \$28.1 billion for five years, and \$78.1 billion through 2018.

Due to the short length of time to implement this new benefit program and the lack of an existing payment system that will support the types of payments authorized under the new program, VA plans to utilize manual processing of claims in a preexisting system with limited functionality until an in-house Information Technology Systems (IT) solution can be developed. As a result, VA estimates discretionary costs of \$78.8 million in FY 2009 and \$452.6 million over ten years for IT and minor construction needs, supplies, equipment (including computers); increased rent; and salaries to support additional personnel. FY 2009 costs are offset by additional funding in the amount of \$100 million dollars made available to VA in chapter 3 of title I of the Supplemental Appropriations Act, 2008.

#### *Regulatory Flexibility Act*

The Secretary of Veterans Affairs hereby certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Although this proposed rule would affect some small entities that are testing organizations or educational institutions, any economic impact on them would be minor because these functions are currently being carried out for other educational assistance programs. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule would be exempt from the initial and final regulatory flexibility



analyses requirements of sections 603 and 604.

#### *Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this proposed rule are 64.117, Survivors and Dependents Educational Assistance; 64.120, Post-Vietnam Era Veterans' Educational Assistance; 64.124, All-Volunteer Force Educational Assistance; and 64.125, Vocational and Educational Counseling for Servicemembers and Veterans. The proposed rule would also affect the Montgomery GI Bill—Selected Reserve program and the Reserve Educational Assistance Program (REAP), for which there are no Catalog of Federal Domestic Assistance numbers.

#### **List of Subjects in 38 CFR Part 21**

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: September 26, 2008.

**James B. Peake,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 21 (subparts B, C, D, G, K, and L, and add subpart P) as follows:

#### **PART 21—VOCATIONAL REHABILITATION AND EDUCATION**

##### **Subpart B—Claims and Applications for Educational Assistance**

1. The authority citation for part 21, subpart B continues to read as follows:

**Authority:** 38 U.S.C. 501(a), ch. 51, and as noted in specific sections.

2. Amend § 21.1029 by:

a. In the introductory text, removing “and L,” and adding, in its place, “L, and P,”;

b. Revising the authority citation at the end of paragraph (e).

The revision reads as follows:

##### **§ 21.1029 Definitions.**

\* \* \* \* \*

(e) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 501(a), 3034(a), 3241(a), 3323(a), 3471, 3513, 5101(a))

\* \* \* \* \*

3. Amend § 21.1030 by revising the authority citation at the end of paragraphs (a), (b) and (c) to read as follows:

##### **§ 21.1030 Claims.**

(a) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 501(a), 3034(a), 3241(a), 3323(a), 3471, 3513, 5101(a))

(b) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 501(a), 3034(a), 3241(a), 3323(a), 3471, 3513, 5101(a))

(c) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 501(a), 3034(a), 3241(a), 3323(a), 3471, 3513, 5101(a))

\* \* \* \* \*

##### **§ 21.1031 [Amended]**

4. Amend § 21.1031(b)(1) introductory text by removing “or L” and adding, in its place, “L, or P”.

##### **§ 21.1032 [Amended]**

5. Amend § 21.1032(a)(1) introductory text by removing “or L” and adding, in its place, “L, or P”.

6. Revise § 21.1033(c) to read as follows:

##### **§ 21.1033 Time limits.**

\* \* \* \* \*

(c) *Time limit for filing a claim for an extended period of eligibility under 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 33, or 35.* VA must receive a claim for an extended period of eligibility provided by § 21.3047, § 21.5042, § 21.7051, § 21.7551, or § 21.9535 by the later of the following dates:

(1) One year from the date on which the spouse's, surviving spouse's, veteran's, reservist's, or other eligible individual's original period of eligibility ended; or

(2) One year from the date on which the spouse's, surviving spouse's, veteran's, reservist's, or other eligible individual's physical or mental disability no longer prevented him or her from beginning or resuming a chosen program of education.

(Authority: 10 U.S.C. 16133(b); 38 U.S.C. 3031(d), 3232(a), 3321, 3512)

\* \* \* \* \*

##### **Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35**

7. The authority citation for part 21, subpart C continues to read as follows:

**Authority:** 38 U.S.C. 501(a), 512, 3500–3566, and as noted in specific sections.

8. Amend § 21.3022 by:

a. Revising paragraphs (a) through (i).  
b. Adding paragraph (j).  
c. Revising the authority citation at the end of the section.

The revisions and addition read as follows:

##### **§ 21.3022 Nonduplication—programs administered by VA.**

\* \* \* \* \*

(a) 38 U.S.C. chapter 30 (Montgomery GI Bill—Active Duty);

(b) 38 U.S.C. chapter 31 (Vocational Rehabilitation and Employment);

(c) 38 U.S.C. chapter 32 (Post-Vietnam Era Veterans' Educational Assistance);

(d) 38 U.S.C. chapter 33 (Post-9/11 GI Bill);

(e) 10 U.S.C. chapter 1606 (Montgomery GI Bill—Selected Reserve);

(f) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);

(g) 10 U.S.C. chapter 107 (Educational Assistance Test Program);

(h) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note.);

(i) The Hostage Relief Act of 1980 (Pub. L. 96–449, 5 U.S.C. 5561 note.); and

(j) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399).

(Authority: 10 U.S.C. 16136(b), 16166(b); 38 U.S.C. 3322, 3681)

##### **Subpart D—Administration of Educational Assistance Programs**

9. The authority citation for part 21, subpart D is revised to read as follows:

**Authority:** 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 33, 34, 35, 36, and as noted in specific sections.

10. Amend § 21.4005 by:

a. Removing “chapter 30, 32, 34, 35, or 36” each place it appears and adding, in each place, “chapter 30, 32, 33, 35, or 36”; removing “chapters 30, 32, 34, 35, or 36” each place it appears and adding, in each place, “chapters 30, 32, 33, 35, or 36”; removing “chapter 30, 32, or 35” and adding, in each place, “chapter 30, 32, 33, or 35”.

b. Revising paragraph (a)(1)(ii) and (a)(2)(ii).

c. Revising the authority citation at the end of paragraphs (a) and (b).

d. Revising paragraph (e) heading.

The revisions read as follows:

##### **§ 21.4005 Conflicting interests.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(ii) Offering a licensing or certification test that is approved for payment of educational assistance under 10 U.S.C.



chapter 1606, or 38 U.S.C. chapter 30, 32, 33, or 35 to veterans, reservists, or eligible individuals who take that test.

(2) \* \* \*

(ii) Offering a licensing or certification test that is approved for payment of educational assistance under 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 33, or 35 to veterans, reservists, or eligible individuals who take that test.

\* \* \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3683, 3689)

(b) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3683, 3689)

\* \* \* \* \*

(e) *Notice to veterans, reservists, and eligible individuals.*

\* \* \* \* \*

11. Amend § 21.4006 by revising the authority citation at the end of paragraphs (a), (a)(2), and (b) to read as follows:

**§ 21.4006 False or misleading statements.**

(a) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3690)

\* \* \* \* \*

(2) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3690)

(b) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3690)

\* \* \* \* \*

12. Amend § 21.4008 by revising the authority citation at the end of paragraphs (a) and (b) to read as follows:

**§ 21.4008 Prevention of overpayments.**

(a) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3690(b))

(b) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3690(b))

13. Amend § 21.4009 by revising the authority citation at the end of paragraphs (b) through (j) to read as follows:

**§ 21.4009 Waiver or recovery of overpayments.**

\* \* \* \* \*

(b) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685)

(c) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(d) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(e) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(f) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(g) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(h) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(i) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(j) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

\* \* \* \* \*

14. Amend § 21.4020 by:

a. Revising paragraph (a)(4) and (5); and

b. Revising the authority citation at the end of paragraphs (a) and (b).

The revisions read as follows:

**§ 21.4020 Two or more programs.**

(a) \* \* \*

(4) 38 U.S.C. chapters 30, 32, 33, 34, 35, and 36;

(5) 10 U.S.C. chapters 107, 1606, and 1607;

\* \* \* \* \*

(Authority: 10 U.S.C. 16136(b), 16166(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3695(a))

(b) \* \* \*

(Authority: 10 U.S.C. 16136(b), 16166(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3695(b))

\* \* \* \* \*

15. Revise § 21.4022 to read as follows:

**§ 21.4022 Nonduplication—programs administered by VA.**

A veteran, reservist, or eligible individual who is eligible for educational assistance allowance or subsistence allowance under more than one of the provisions of law listed in this paragraph, whether based on his or her own service or the service of another person, cannot receive such benefits concurrently. The individual must elect under which program he or she will receive benefits for the particular period or periods during which education or training is to be pursued.

(a) 38 U.S.C. 30 (Montgomery GI Bill—Active Duty);

(b) 38 U.S.C. 31 (Vocational Rehabilitation and Employment Program);

(c) 38 U.S.C. 32 (Post-Vietnam Era Veterans' Educational Assistance);

(d) 38 U.S.C. 33 (Post-9/11 GI Bill)

(e) 38 U.S.C. 35 (Survivors' and Dependents' Educational Assistance);

(f) 10 U.S.C. 1606 (Montgomery GI Bill—Selected Reserve);

(g) 10 U.S.C. 1607 (Reserve Educational Assistance Program);

(h) 10 U.S.C. 107 (Educational Assistance Test Program);

(i) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note);

(j) The Hostage Relief Act of 1980

(Pub. L. 96–449), 5 U.S.C. 5661 note);

(k) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399).

(Authority: 10 U.S.C. 16136(b), 16166(b); 38 U.S.C. 3322, 3681)

16. Amend § 21.4145 by:

a. In paragraph (a)(1), removing “chapter 30 or 32” and adding, in its place, “chapter 30, 32 or 33”; and  
b. Revising the authority citation at the end of paragraphs (a), (c), (d), (e), (f), and (h).

c. Adding an authority citation at the end of paragraph (b).

d. Adding an authority citation at the end of paragraph (g).

The revisions and additions read as follows:

**§ 21.4145 Work study allowance.**

(a) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(b) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537, 5101(a))

(c) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(d) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(e) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(f) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(g) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(h) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

\* \* \* \* \*

#### **§ 21.4146 [Amended]**

17. Amend § 21.4146, paragraph (a), by removing “chapters 30, 32, 35, or 36” and adding, in its place, “chapters 30, 32, 33, 35, or 36”.

18. Amend § 21.4153 by revising paragraph (c)(4)(i) and the authority citation following paragraph (c)(4)(i) to read as follows:

#### **§ 21.4153 Reimbursement of expenses.**

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(i) The work has a direct relationship to the requirements of 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 33, 35, or 36; and

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3674)

\* \* \* \* \*

#### **§ 21.4200 [Amended]**

19. Amend § 21.4200 by:

a. In the introductory text, removing “subparts C, F, G, H, K, and L” and adding, in its place, “subparts C, G, H, K, L, and P”.

20. Amend § 21.4201 by:

a. In paragraph (a), removing “the Department of Veterans Affairs pursuant to Title 38 U.S.C.” and adding, in its place, “VA under title 38, U.S.C., or under title 10, U.S.C.”.

b. In paragraph (c)(4), removing “chapters 30, 31, 32, 34, 35 and 36, title 38, United States Code, and chapter 1606, title 10, United States Code” and adding, in its place, “38 U.S.C. chapters 30, 31, 32, 33, 35 and 36, and 10 U.S.C. chapter 1606”.

c. In paragraph (e)(2) introductory text, removing “United States Code or under chapter 1606, title 10, United States Code” and adding, in its place, “U.S.C., or under title 10, U.S.C.”.

d. In paragraph (f)(1)(ii), removing “chapters 30, 31, 32, 34, 35, or 36, title 38, U.S.C., or chapter 1606, title 10 U.S.C.” and by adding, in its place, “38 U.S.C. chapters 30, 31, 32, 33, 35 and 36, and 10 U.S.C. chapter 1606”.

e. In paragraph (g)(2) introductory text, removing “either under Chapter 1606, Title 10, U.S.C., or under Chapters 30, 32, 34, or 36, Title 38 U.S.C.” and adding, in its place, “under 10 U.S.C. chapter 1606 or under 38 U.S.C. chapter 30, 32, 33, or 36”.

f. Revising the authority citation at the end of paragraphs (a), (c)(4) introductory text, (c)(4)(ii), (d), (e)(2)(i), (e)(2)(iv), (e)(3), (f)(1) introductory text, (f)(1)(ii), (f)(2), (g)(2), (g)(2)(ii), (g)(5), and (h).

The revisions read as follows:

#### **§ 21.4201 Restrictions on enrollment; percentage of students receiving financial support.**

(a) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

\* \* \* \* \*

(ii) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(d) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(e) \* \* \*

(2) \* \* \*

(i) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

\* \* \* \* \*

(iv) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(3) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(f) \* \* \*

(1) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

\* \* \* \* \*

(ii) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(2) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(g) \* \* \*

(2) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

\* \* \* \* \*

(ii) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

\* \* \* \* \*

(5) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

\* \* \* \* \*

(h) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

21. Amend § 21.4206 by:

a. In the introductory text and in paragraph (a), removing “chapter 30, 32, 34, 35 or 36” and adding, in its place, “chapter 30, 32, 33, 35 or 36”.

b. In paragraph (e)(1), removing “chapters 30, 32, 34, 35 and 36 of title 38 U.S.C.” and adding, in its place, “chapters 30, 32, 33, 35 and 36 of title 38, U.S.C.”.

c. Revising the authority citation at the end of paragraphs (a) through (d).

d. Removing the authority citation at the end of paragraph (e)(1) and by revising the authority citation at the end of the paragraph (e).

e. Adding an information collection approval parenthetical at the end of the section.

The revisions and addition read as follows:

#### **§ 21.4206 Reporting fee.**

\* \* \* \* \*

(a) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(b) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(c) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(d) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(e) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0073)

\* \* \* \* \*

22. Amend § 21.4209 by:

a. In paragraph (a)(1), removing “chapter 30, 32, 34, 35, or 36” and adding, in its place, “chapter 30, 32, 33, 35, or 36”.

b. In paragraph (c), removing “veterans under 38 U.S.C. chapter 30 or 32,” and adding, in its place, “veterans under 38 U.S.C. chapter 30, 32, or 33.”

c. Revising the authority citation at the end of paragraphs (a) through (c), and (f).

The revisions read as follows:

#### **§ 21.4209 Examination of records.**

(a) \* \* \*

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3323(a), 3689, 3690)

(b) \* \* \*

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3323(a), 3689, 3690)

(c) \* \* \*

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3323(a), 3690)

\* \* \* \*

(f) \* \* \*

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3323(a), 3689, 3690)

\* \* \* \*

23. Amend § 21.4210 by:

a. Revising paragraph (a)(1).

b. In paragraph (b)(1)(i), removing “chapter 30, 32, 34, 35, or, 36” and adding, in its place, “chapter 30, 32, 33, 35, or 36”.

c. In paragraph (d)(2)(ii), removing “chapters 30, 32, 34, 35, and 36” and adding, in its place, “chapters 30, 32, 33, 35, and 36”.

d. Revising paragraph (d)(4)(ii).

e. Revising the authority citation at the end of paragraphs (a), (b)(1)(ii), (c), (d), (e)(2), and (f) through (i).

The revisions read as follows:

**§ 21.4210 Suspension and discontinuance of educational assistance payments and of enrollments or reenrollments for pursuit of approved courses.**

(a) *Overview; explanation of terms used in §§ 21.4210 through 21.4216.* (1) VA may pay educational assistance to a reservist under 10 U.S.C. chapter 1606 for the reservist's pursuit of a course approved in accordance with the provisions of 38 U.S.C. chapter 36. VA may pay educational assistance under 38 U.S.C. chapter 32 or 35 to a veteran or eligible person for the individual's pursuit of a course approved in accordance with the provisions of 38 U.S.C. chapter 36; or if the individual has taken a licensing or certification test approved in accordance with the provisions of 38 U.S.C. chapter 36. VA may pay educational assistance under 38 U.S.C. chapter 30 to a veteran or servicemember for the individual's pursuit of a course approved in accordance with the provisions of 38 U.S.C. chapter 36; if the individual has taken a licensing or certification test approved in accordance with the provisions of 38 U.S.C. chapter 36 or if the individual is entitled to be paid benefits (tuition assistance top-up) to meet all or a portion of an educational institution's charges for education or training that the military department concerned has not covered under tuition assistance. VA may pay educational assistance under 38 U.S.C. chapter 33 to an eligible individual or, as appropriate, to the individual's institution of higher learning on his or her behalf, for the individual's pursuit of a course or program of education if the course or program of education is offered by an institution of higher learning and approved under 38 U.S.C. chapter 30 in accordance with the provisions of 38

U.S.C. chapter 36; if the individual has taken a licensing or certification test approved in accordance with the provisions of 38 U.S.C. chapter 36, or if an individual is entitled to be paid educational assistance to meet all or a portion of the institution of higher learning's established charges that the military department concerned has not covered by tuition assistance under 10 U.S.C. 2007(a) or (c). Except for tuition assistance top-up, where courses do not need to be approved, a State approving agency designated by VA, or in some instances VA, approves the course or test for payment purposes.

Notwithstanding such approval, VA, as provided in paragraphs (b), (c), and (d) of this section, may suspend, discontinue, or deny payment of benefits to any or all otherwise eligible individuals for pursuit of a course or training approved under 38 U.S.C. chapter 36, and for taking a licensing or certification test approved under 38 U.S.C. chapter 36.

\* \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3452, 3471, 3690)

(b) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689, 3690)

\* \* \* \*

(c) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3690)

(d) \* \* \*

(4) \* \* \*

(ii) Has instituted a policy or practice with respect to the payment of tuition, fees, or other established charges that substantially denies to veterans, servicemembers, reservists, or other eligible persons the benefits of advance payment of educational assistance authorized to such individuals under §§ 21.4138(a), 21.7140(a), 21.7640(d), or 21.9680; or

\* \* \* \*

(Authority: 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3680A(d), 3684, 3685, 3689, 3690, 3696, 5301)

(e) \* \* \*

(2) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3690)

\* \* \* \*

(f) \* \* \*

(Authority: 10 U.S.C. 16136(b); 31 U.S.C. 3801–3812; 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689, 3690)

(g) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689, 3690)

(h) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3690)

(i) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3683(b))

24. Amend § 21.4211 by:

a. Removing “chapter 30, 32, 34, 35, or 36” each place it appears and adding, in each place, “chapter 30, 32, 33, 35, or 36”.

b. Revising the authority citation at the end of paragraphs (a) through (e).

The revisions read as follows:

**§ 21.4211 Composition, jurisdiction, and duties of the Committee on Educational Allowances.**

(a) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3323(a), 3241(a), 3689(d), 3690)

(b) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3323(a), 3241(a), 3689(d), 3690)

(c) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3323(a), 3241(a), 3689(d), 3690)

(d) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3323(a), 3241(a), 3689(d), 3690)

(e) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3323(a), 3241(a), 3689(d), 3690)

25. Amend § 21.4212 by revising the authority citation at the end of the section to read as follows:

**§ 21.4212 Referral to Committee on Educational Allowances.**

\* \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

26. Amend § 21.4213 by revising the authority citation at the end of the section to read as follows:

**§ 21.4213 Notices of hearing by Committee on Educational Allowances.**

\* \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

27. Amend § 21.4214 by revising the authority citation for paragraphs (a) through (p) to read as follows:

**§ 21.4214 Hearing rules and procedures for Committee on Educational Allowances.**

(a) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(b) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(c) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(d) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(e) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(f) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(g) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(h) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(i) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(j) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(k) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(l) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(m) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(n) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(o) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(p) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

28. Amend § 21.4215 by revising the authority citation for paragraphs (a) through (e) to read as follows:

**§ 21.4215 Decision of Director of VA Regional Processing Office of Jurisdiction.**

(a) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(b) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(c) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(d) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(e) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

29. Amend § 21.4216 by revising the authority citation for paragraphs (a) and (c) to read as follows:

**§ 21.4216 Review of decision of director of VA Regional Processing Office of jurisdiction.**

(a) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), (e), 3690; Pub. L. 122 Stat. 2375)

\* \* \* \* \*

(c) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

30. Amend § 21.4233 by revising the authority citation at the end of paragraph (e) to read as follows:

**§ 21.4233 Combination.**

\* \* \* \* \*

(e) \* \* \*

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3002(8), 3034(d), 3241(b), 3323(a), 3452(c), 3501(a)(6), 3675, 3676)

31. Amend § 21.4234 by:

a. Removing “veteran or eligible person” each time it appears, and adding, in its place, “veteran, reservist, or eligible person”.

b. Revising paragraph (c).

c. In paragraph (d)(1)(i), removing “veteran or eligible spouse or surviving spouse” and adding, in its place, “veteran or eligible person other than a child receiving educational assistance under 38 U.S.C. chapter 35”.

d. In paragraph (d)(1)(iii) and (d)(2)(iii), removing “child”, and adding, in each place, “child receiving educational assistance under 38 U.S.C. chapter 35”.

e. Revising the authority citation at the end of paragraphs (a)(2)(iv), (a)(2)(v), (b), (c), (d)(3), (d)(4), and (e).

The revisions read as follows:

**§ 21.4234 Change of program.**

(a) \* \* \*

(2) \* \* \*

(iv) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(v) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(b) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(c) Optional change of program. A spouse or surviving spouse eligible to receive educational assistance under 38 U.S.C. chapter 35 may make one

optional change of program if his or her previous course was not interrupted due to his or her own misconduct, neglect, or lack of application.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(d) \* \* \*

(3) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(4) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(e) \* \* \*

(Authority: 10 U.S.C. 510(h), 16136(b), 16166(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

\* \* \* \* \*

32. Amend § 21.4236 by revising the authority citation at the end of paragraphs (b), (c), and (d) to read as follows:

**§ 21.4236 Tutorial assistance.**

\* \* \* \* \*

(b) \* \* \*

(Authority: 10 U.S.C. 16131(h); 38 U.S.C. 3019, 3234, 3314, 3492, 3533(b))

(c) \* \* \*

(Authority: 10 U.S.C. 16131(h); 38 U.S.C. 3019, 3314, 3492, 3533(b))

(d) \* \* \*

(Authority: 10 U.S.C. 16131(h); 38 U.S.C. 3019, 3314, 3492, 3533(b))

33. Amend § 21.4250 by:

a. In paragraph (c)(2)(ii), removing “Chapter 1606 or 38 U.S.C. Chapters 30, 32, 35, or 36” and adding, in its place, “chapter 1606 or 38 U.S.C. chapter 30, 32, 33, 35, or 36”.

b. In paragraph (c)(2)(iii), removing “chapters 30, 32, or 35” and adding, in its place, “chapter 30, 32, 33, or 35”.

c. Revising the authority citation at the end of paragraphs (a) and (c).

The revisions read as follows:

**§ 21.4250 Course and licensing and certification test approval; jurisdiction and notices.**

(a) \* \* \*

(Authority: 38 U.S.C. 3014(b), 3313(e), 3315, 3670, 3672(a))

\* \* \* \* \*

(c) \* \* \*

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3314, 3323(a), 3476, 3523, 3672, 3673, 3689)

\* \* \* \* \*

34. Amend § 21.4252 by revising the authority citation at the end of paragraph (c) to read as follows:

**§ 21.4252 Courses precluded; erroneous, deceptive, or misleading practices.**

\* \* \* \* \*

(c) \* \* \*

(Authority: 10 U.S.C. 16131(f); 38 U.S.C. 3034, 3241(b), 3323(a), 3523(b), 3680A(b))

### Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

35. The authority citation for part 21, subpart G continues to read as follows:

**Authority:** 38 U.S.C. 501(a), chs. 32, 36, and as noted in specific sections.

36. Amend § 21.5022 by revising paragraphs (a) and (b)(1)(i) through (b)(1)(ix) and the authority citation at the end of the section to read as follows:

#### § 21.5022 Eligibility under more than one program.

(a) *Concurrent benefits under more than one program.* (1) An individual cannot receive educational assistance under 38 U.S.C. chapter 32 concurrently with benefits under—

(i) 38 U.S.C. chapter 30 (Montgomery GI Bill—Active Duty);

(ii) 38 U.S.C. chapter 31 (Vocational Rehabilitation and Employment);

(iii) 38 U.S.C. chapter 33 (Post-9/11 GI Bill);

(iv) 38 U.S.C. chapter 35 (Survivors' and Dependents' Educational Assistance);

(v) 10 U.S.C. chapter 1606 (Montgomery GI Bill—Selected Reserve);

(vi) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);

(vii) 10 U.S.C. chapter 107

(Educational Assistance Test Program); (viii) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note);

(ix) The Hostage Relief Act of 1980 (Pub. L. 96–449, 5 U.S.C. 5561 note); or (x) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399).

(Authority: 38 U.S.C. 3322(a), 3681(b), 3695)

(2) *Election.* If an individual is eligible for benefits under 38 U.S.C. chapter 32 and one or more of the programs listed in (a)(1)(i) through (a)(1)(x) of this section, he or she must elect in writing under which program he or she is claiming benefits. The eligible person may make a new election at any time, but may not elect more than once in any calendar month.

(Authority: 38 U.S.C. 3033(a), 3322(a))

(b) \* \* \*

(1) \* \* \*

(i) 38 U.S.C. chapter 30 (Montgomery GI Bill—Active Duty);

(ii) 38 U.S.C. chapter 33 (Post-9/11 GI Bill);

(iii) 38 U.S.C. chapter 35 (Survivors' and Dependents' Educational Assistance);

(iv) 10 U.S.C. chapter 1606 (Montgomery GI Bill—Selected Reserve);

(v) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);

(vi) 10 U.S.C. chapter 107

(Educational Assistance Test Program); (vii) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note);

(viii) The Hostage Relief Act of 1980 (Pub. L. 96–449, 5 U.S.C. 5561 note); or

(ix) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399).

\* \* \* \* \*

(Authority: 38 U.S.C. 3034(a), 3231, 3323(a))

### Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

37. The authority citation for part 21, subpart K continues to read as follows:

**Authority:** 38 U.S.C. 501(a), chs. 30, 36, and as noted in specific sections.

38. Amend § 21.7143 by revising paragraphs (a) and (b) to read as follows:

#### § 21.7143 Nonduplication of educational assistance.

(a) *Payments of educational assistance shall not be duplicated.* (1) Except for receipt of a Montgomery GI Bill—Selected Reserve kicker provided under 10 U.S.C. 16131(i), a veteran is barred from concurrently receiving educational assistance under 38 U.S.C. chapter 30 and—

(i) 38 U.S.C. chapter 31 (Vocational Rehabilitation and Employment);

(ii) 38 U.S.C. chapter 32 (Post-Vietnam Era Veterans' Educational Assistance);

(iii) 38 U.S.C. chapter 33 (Post-9/11 GI Bill);

(iv) 38 U.S.C. chapter 35 (Survivors' and Dependents' Educational Assistance);

(v) 10 U.S.C. chapter 1606 (Montgomery GI Bill—Selected Reserve);

(vi) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);

(vii) 10 U.S.C. chapter 107

(Educational Assistance Test Program); (viii) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note);

(ix) The Hostage Relief Act of 1980 (Pub. L. 96–449, 5 U.S.C. 5561 note); or

(x) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399).

(b) *Election.* If an individual is eligible for benefits under 38 U.S.C. chapter 30

and one or more of the programs listed in (a)(1)(i) through (a)(1)(x) of this section, he or she must elect in writing under which program he or she is claiming benefits. The eligible person may make a new election at any time, but may not elect more than once in any calendar month.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3033(a), 3681(b))

### Subpart L—Educational Assistance for Members of the Selected Reserve

39. The authority citation for part 21, subpart L is amended to read as follows:

**Authority:** 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 512, ch. 36, and as noted in specific sections.

40. Amend § 21.7642 by revising paragraph (a) to read as follows:

#### § 21.7642 Nonduplication of educational assistance.

(a) *Payments of educational assistance shall not be duplicated.* A reservist is barred from receiving educational assistance concurrently under 10 U.S.C. chapter 1606 and any of the following provisions of law—

(1) 38 U.S.C. 30 (Montgomery GI Bill—Active Duty);

(2) 38 U.S.C. 31 (Vocational Rehabilitation and Employment);

(3) 38 U.S.C. 32 (Post-Vietnam Era Veterans' Educational Assistance);

(4) 38 U.S.C. 33 (Post-9/11 GI Bill);

(5) 38 U.S.C. 35 (Survivors' and Dependents' Educational Assistance);

(6) 10 U.S.C. 1607 (Reserve Educational Assistance Program);

(7) 10 U.S.C. 107 (Educational Assistance Test Program);

(8) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note);

(9) The Hostage Relief Act of 1980 (Pub. L. 96–449, 5 U.S.C. 5561 note); or

(10) The Omnibus Diplomatic Security Act of 1986 (Pub. L. 99–399).

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3033(a), 3241(a), 3322(a), 3681)

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41. Add new subpart P to read as follows:

### Subpart P—Post-9/11 GI Bill

Sec.

21.9500 Introduction.

#### Definitions

21.9505 Definitions.

#### Claims and Applications

21.9510 Claims, VA's duty to assist, and time limits.

#### Eligibility

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- 21.9770 Administrative.

**Authority:** 38 U.S.C. 501(a), 512, chs. 33, 36 and as noted in specific sections.

**Subpart P—Post-9/11 GI Bill****§ 21.9500 Introduction.**

An educational assistance program is established for individuals who served on active duty after September 10, 2001. This educational assistance program is effective August 1, 2009.

(Authority: Pub. L. 110–252, 122 Stat. 2357, 2378)

**Definitions****§ 21.9505 Definitions.**

For the purposes of this subpart (governing the administration and payment of educational assistance under 38 U.S.C. chapter 33) the following definitions apply. (See also additional definitions in §§ 21.1029 and 21.4200.)

*Academic year* means a span of time of not more than 12 months during which the institution of higher learning offers periods of instruction and includes all divisions of the school year as defined in § 21.4200(b)(2) through (b)(5). If an institution of higher learning has an academic year lasting longer than 12 months, VA will consider the academic year for that institution to be August 1st of each calendar year through July 31st of the subsequent calendar year.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

*Active duty* means full-time duty in the regular components of the Armed Forces or under a call or order to active duty under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304. Active duty does not include—

(1) Full-time duty as a commissioned officer of the Regular or Reserve Corps of the Public Health Service;

(2) Full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration;

(3) Full-time National Guard Duty performed under 32 U.S.C. orders;

(4) Any period during which the individual—

(i) Was assigned full-time by the Armed Forces to a civilian institution to pursue a program of education that was substantially the same as programs of education offered to civilians;

(ii) Served as a cadet or midshipman at one of the service academies; or

(iii) Served under the provisions of 10 U.S.C. 12103(d) pursuant to an enlistment in the Army National Guard, Air National Guard, Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve;

(5) A period of service—

(i) Required by an officer pursuant to an agreement under 10 U.S.C. 2107(b);

(ii) Required by an officer pursuant to an agreement under 10 U.S.C. 4348, 6959, or 9348;

(iii) That was terminated because the individual is considered a minor by the Armed Forces, was erroneously enlisted, or received a defective enlistment agreement; or

(iv) Counted for purposes of repayment of an education loan under 10 U.S.C. chapter 109; or

(6) A period of Selected Reserve service used to establish eligibility under 38 U.S.C. chapter 30 or 10 U.S.C. chapter 1606 or 1607.

(Authority: 38 U.S.C. 101(21)(A), 3301(1), 3311(d), 3322(b) and (c))

*Advance payment* means an amount of educational assistance payable under § 21.9640(b)(1)(ii) or (b)(2)(ii) for the month or fraction of the month in which the individual's quarter, semester, or term will begin plus the amount for the following month.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d))

*Course* means a unit of instruction required for an approved program of education that provides an individual with the knowledge and skills necessary to meet the requirements of the selected educational objective.

(Authority: 38 U.S.C. 3323(c))

*Distance learning* means the pursuit of a program of education via distance education as defined in 20 U.S.C. 1003(6).

(Authority: 20 U.S.C. 1003(6); 38 U.S.C. 3323(c))

*Educational assistance* means the monetary benefit payable under 38 U.S.C. chapter 33 to, or on behalf of, individuals who meet the eligibility requirements for pursuit of an approved program of education under 38 U.S.C. chapter 33.

(Authority: 38 U.S.C. 3313)

*Enrollment period* means a term, quarter, or semester during which the institution of higher learning offers instruction.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(g))

*Entry level and skill training* means—

(1) Basic Combat Training and Advanced Individual Training for members of the Army;

(2) Recruit Training (Boot Camp) and Skill Training ("A" School) for members of the Navy;

(3) Basic Military Training and Technical Training for members of the Air Force;

(4) Recruit Training and Marine Corps Training (School of Infantry Training) for members of the Marine Corps; and

(5) Basic Training for members of the Coast Guard.

(Authority: 38 U.S.C. 3301(2))

*Established charges* means the actual charge for tuition and fees that similarly circumstanced nonveterans enrolled in the program of education are required to pay.

(Authority: 38 U.S.C. 3313(h))

*Fees* means any mandatory charges (other than tuition) that are universally applied by the institution of higher learning to each and every student enrolled in an undergraduate program for that quarter, semester, or term.

(Authority: 38 U.S.C. 501(a), 3323(c))

*Institution of higher learning (IHL)* means a college, university, or similar institution, including a technical or business school, offering postsecondary level academic instruction that leads to an associate or higher degree if the school is empowered by the appropriate State education authority under State law to grant an associate or higher degree. When there is no State law to authorize the granting of such a degree, the school may be recognized as an institution of higher learning if it is accredited for degree programs by a recognized accrediting agency. Such term shall also include a hospital offering educational programs at the postsecondary level without regard to whether the hospital grants a postsecondary degree. Such term shall also include an educational institution that offers courses leading to a standard college degree or its equivalent, and is not located in a State but is recognized as an educational institution by the secretary of education (or comparable official) of the country or other jurisdiction in which the institution is located.

(Authority: 38 U.S.C. 3034(a), 3313(b), 3323(a), 3452(f))

*Interval* means a period of time between regularly scheduled individual terms, semesters, or quarters.

(Authority: 38 U.S.C. 3034(a)(1), 3323(a), 3680)

*Lump sum payment* means an amount of educational assistance paid for the entire term, quarter, or semester.

(Authority: 38 U.S.C. 3323(c))

*Program of education* means a curriculum or combination of courses pursued at an institution of higher learning that are accepted as necessary to meet the requirements for a predetermined and identified educational, professional, or vocational objective. Such term also means any curriculum or combination of courses

pursued at an institution of higher learning that are accepted as necessary to meet the requirements for more than one predetermined and identified educational, professional, or vocational objective if all the objectives pursued are generally recognized as being reasonably related to a single career field.

(Authority: 38 U.S.C. 3034(a), 3301, 3323(a), 3452(b))

*Pursuit* means to work, during a certified enrollment period, towards the objective of a program of education. This work must be in accordance with approved institutional policy and applicable criteria of title 38, U.S.C.; and must be necessary to reach the program's objective.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(g))

*Rate of pursuit* means the measurement obtained by dividing the number of course (credit or clock) hours an individual is enrolled in by the number of course (credit or clock) hours considered to be full-time training at the institution of higher learning. The resulting percentage will be the individual's rate of pursuit not to exceed 100 percent. For the purpose of this subpart, VA will consider any rate of pursuit higher than 50 percent to be more than half-time training.

(Authority: 38 U.S.C. 3323, 3680)

*Transferor* means an individual who is entitled to educational assistance under the Post-9/11 GI Bill based on his or her own active duty service and who is approved by the military department to transfer all or a portion of his or her entitlement to one or more dependents.

(Authority: 38 U.S.C. 3319)

## Claims and Applications

### § 21.9510 Claims, VA's duty to assist, and time limits.

The provisions of subpart B of this part apply to claims filed for educational assistance under 38 U.S.C. chapter 33 with respect to VA's responsibilities upon receipt of claim, VA's duty to assist claimants in obtaining evidence, and time limits.

(Authority: 38 U.S.C. 3323(c), 5101, 5102, 5103, 5103A)

## Eligibility

### § 21.9520 Basic eligibility.

An individual may establish eligibility for educational assistance under 38 U.S.C. chapter 33 based on active duty service after September 10, 2001, if he or she—

(a) Serves a minimum of 90 aggregate days (excluding entry level and skill

training) and, after completion of such service—

(1) Continues on active duty;

(2) Is discharged from service with an honorable discharge;

(3) Is placed on the retired list, temporary disability retired list, or transferred to the Fleet Reserve or the Fleet Marine Corps Reserve;

(4) Is released from service characterized as honorable for further service in a reserve component; or

(5) Is discharged or released from service for—

(i) A medical condition that preexisted such service and is not determined to be service-connected;

(ii) Hardship, as determined by the Secretary of the military concerned; or

(iii) A physical or mental condition that interfered with the individual's performance of duty but was not characterized as a disability and did not result from the individual's own misconduct;

(b) Serves a minimum of 30 continuous days and, after completion of such service, is discharged due to a service-connected disability; or

(c) Makes an irrevocable election to receive benefits under 38 U.S.C. chapter 33 instead of receiving benefits under 38 U.S.C. chapter 30 or 10 U.S.C. chapter 1606 or 1607 after meeting the service requirements in paragraph (a) or (b) of this section.

(Authority: 38 U.S.C. 3311; Pub. L. 110–252, Stat. 2375–2376)

### § 21.9525 Eligibility for increased and supplemental educational assistance.

(a) *Increased assistance for members with critical skills or specialty.* The Secretary of the military department concerned, pursuant to regulations prescribed by the Secretary of Defense, may increase the amount of educational assistance payable under § 21.9640(b)(1)(ii) or (b)(2)(ii) to an individual who has a skill or specialty in which there is a critical shortage of personnel, for which there is difficulty recruiting, or, in the case of critical units, for which there is difficulty in retaining personnel.

(b) *Supplemental assistance for members serving additional service.* The Secretary of the military department concerned, pursuant to regulations prescribed by the Secretary of Defense, may supplement the amount of educational assistance payable under § 21.9640(b)(1)(ii) or (b)(2)(ii) to an individual who meets the following service requirements.

(1) *Individuals with active duty service only.* Supplemental educational assistance may be offered to an individual who serves 5 or more



consecutive years on active duty in the Armed Forces in addition to the years counted to qualify for educational assistance, without a break in such service, and—

- (i) Continues on active duty without a break;
- (ii) Is discharged from service with an honorable discharge;
- (iii) Is placed on the retired list;
- (iv) Is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve;
- (v) Is placed on the temporary disability retired list; or
- (vi) Is released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.

(2) *Individuals with Selected Reserve service.* (i) Supplemental educational assistance may be offered to an individual who—

- (A) Serves 2 or more consecutive years on active duty in the Armed Forces in addition to the years on active duty counted to qualify for educational assistance;
- (B) Serves 4 or more consecutive years of duty in the Selected Reserve in addition to the years of duty in the Selected Reserve counted to qualify the individual for educational assistance; and

(C) After completion of such service—

- (1) Is discharged from service with an honorable discharge;

- (2) Is placed on the retired list;
- (3) Is transferred to the Fleet Reserve or Fleet Marine Corps Reserve;
- (4) Is placed on the temporary disability retired list;

- (5) Continues on active duty; or
- (6) Continues in the Selected Reserve.

(ii) The Secretary concerned may, pursuant to regulations prescribed by the Secretary of Defense, determine the maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even though the individual—

(A) Is unable to locate a unit of the Selected Reserve for which he or she is eligible;

(B) Is unable to locate a unit of the Selected Reserve that has a vacancy; or

(C) For any other reason other than those stated in paragraph (b)(2)(ii)(A) and (B) above.

(iii) Any decision as to the continuity of an individual's service in the Selected Reserve made by the Secretary of Defense will be binding upon VA.

(Authority: 38 U.S.C. 3021, 3022, 3023, 3316)

#### **§ 21.9530 Eligibility time limit.**

(a) Except as provided in paragraphs (b) through (e) of this section, an

individual's period of eligibility for educational assistance will terminate effective 15 years from the date of the last discharge or release from active duty of at least—

- (1) 90 continuous days; or
- (2) 30 continuous days if the individual is released for a service-connected disability.

(b) In the case of an individual who establishes eligibility and does not meet one of the service requirements specified in paragraph (a) of this section, the individual's period of eligibility for educational assistance will terminate effective 15 years from the date of discharge for the last period of service used to meet the minimum service requirements for eligibility as stated in § 21.9520.

(c) *Amendment of military records.* If an individual's eligibility for educational assistance is established as a result of a correction of military records under 10 U.S.C. 1552, a change, correction, or modification of a discharge or dismissal under 10 U.S.C. 1553, or other corrective action by a competent military authority, the individual's period of eligibility will terminate effective 15 years from the date of the change, correction, modification, or other corrective action.

(Authority: 38 U.S.C. 3311(c), 3321)

(d) *Time limit for spouse using transferred entitlement.* (1) Unless the transferor dies while on active duty, the ending date of the spouse's period of eligibility for entitlement transferred under § 21.9570 is the earliest of the following—

- (i) The transferor's ending date as determined under this section;
- (ii) The ending date specified by the transferor, if the transferor specified the period for which the transfer was effective; or

(iii) The effective date of the transferor's revocation of transferred entitlement as determined under § 21.9570(f).

(2) If the transferor dies while on active duty, the ending date of the spouse's period of eligibility is the earliest of the following—

- (i) The date 15 years from the transferor's date of death;
- (ii) The ending date specified by the transferor, if the transferor specified the period for which the transfer was effective; or

(iii) The effective date of the transferor's revocation of transferred entitlement as determined under § 21.9570(f).

(Authority: 38 U.S.C. 3319)

(e) *Time limit for child using transferred entitlement.* (1) The ending

date of the child's period of eligibility for entitlement transferred under § 21.9570 is the earliest of the following—

(i) The ending date specified by the transferor, if the transferor specified the period for which the transfer was effective;

(ii) The effective date of the transferor's revocation of transferred entitlement as determined under § 21.9570(f); or

(iii) The day the child turns 26.

(2) [Reserved]

(Authority: 38 U.S.C. 3319)

#### **§ 21.9535 Extended period of eligibility.**

VA will extend an individual's period of eligibility in accordance with the following provisions.

(a) *Disability extension.* (1) VA will grant an extension of the period of eligibility, as determined in § 21.9530 provided—

(i) The individual applies for the extension within the time specified in § 21.1033(c); and

(ii) The medical evidence clearly establishes that the individual was prevented from initiating or completing the chosen program of education within the original period of eligibility because of a physical or mental disability that did not result from the individual's willful misconduct. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct. VA will not consider an individual's disability for a period of 30 days or less as having prevented the individual from initiating or completing a chosen program, unless the evidence establishes that the individual was prevented from enrolling or reenrolling in the chosen program or was forced to discontinue attendance due to the short-term disability.

(2) *Length of extension.* An individual's extended period of eligibility shall be for the length of time that the individual was prevented from initiating or completing his or her chosen program of education. This will be determined as follows—

(i) If the individual is pursuing a program of education organized on a term, quarter, or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date the individual was prevented from initiating or completing training during his or her original period of eligibility to the earliest of—

(A) The beginning date of the ordinary term, quarter, or semester following the day the individual's training became medically feasible;

(B) The last date of the individual's original period of eligibility as determined in § 21.9530; or

(C) The date the individual resumed training.

(ii) If the individual is pursuing a program of education that is not organized on a term, quarter, or semester basis, his or her extended period of eligibility will contain the same number of days as the number of days from the date the individual was prevented from initiating or completing training during his or her original period of eligibility to the earliest of—

(A) The date the individual's training became medically feasible; or

(B) The last date of the individual's original period of eligibility as determined in § 21.9530.

(b) *Forcibly detained extension.* (1) VA will grant an extension of the period of eligibility, as determined in § 21.9530, equal to the period of time the individual—

(i) Was captured and forcibly detained by a foreign government or power, and

(ii) Was hospitalized at a military, civilian, or medical facility immediately following release from the foreign government or power.

(2) [Reserved]

(Authority: 38 U.S.C. 3321)

## Entitlement

### § 21.9550 Entitlement.

(a) Subject to the provisions of § 21.4020 and this section, an eligible individual is entitled to a maximum of 36 months of educational assistance (or its equivalent in part-time educational assistance) under 38 U.S.C. chapter 33.

(b)(1) An individual who, as of August 1, 2009, has used entitlement under 38 U.S.C. chapter 30, but who retains unused entitlement under that chapter, makes an irrevocable election to receive educational assistance under the provisions of 38 U.S.C. chapter 33 instead of educational assistance under the provisions of chapter 30, he or she will be limited to one month (or partial month) of entitlement under chapter 33 for each month (or partial month) of unused entitlement under chapter 30 (including any months of chapter 30 entitlement previously transferred to a dependent that the individual has revoked).

(2) An individual, who as of August 1, 2009, was eligible under 38 U.S.C. chapter 30 but had not used any entitlement under that program, was making contributions towards chapter 30, or was a servicemember who would have been eligible for chapter 30 if he or she had not declined participation, will receive 36 months of entitlement under chapter 33.

(3) An individual who, as of August 1, 2009, has exhausted all entitlement, to which he or she was eligible under chapter 30, will not receive entitlement under chapter 33 based on his or her previous chapter 30 eligibility.

(c) Except as provided in §§ 21.9560(e), 21.9570(m), and 21.9635(o), no individual is entitled to more than 36 months of full-time educational assistance.

(Authority: 38 U.S.C. 3034(a), 3312(a), 3323(a), 3695; Pub. L. 110–252, 122 Stat. 2377)

### § 21.9555 Entitlement to supplemental educational assistance.

In determining the entitlement of an individual who is eligible for supplemental educational assistance, VA will—

(a) Calculate the individual's entitlement to 38 U.S.C. chapter 33 educational assistance on the day he or she establishes eligibility for supplemental educational assistance; and

(b) Credit the individual with the same number of months and days of entitlement to supplemental educational assistance as the number calculated in paragraph (a) of this section.

(Authority: 38 U.S.C. 3023, 3316)

### § 21.9560 Entitlement charges.

(a) *Overview.* Except as provided in paragraphs (c) through (f) of this section, VA will base entitlement charges on the principle that an eligible individual who is paid educational assistance for one day of full-time pursuit should be charged one day of entitlement.

(b) *Determining entitlement charge.*

(1) VA will make a charge against entitlement as follows:

(i) *Full-time pursuit.* If the individual is pursuing a program of education on a full-time basis, the entitlement charge will be one of the following—

(A) During any period in which VA pays established charges to the institution of higher learning on the individual's behalf, the entitlement charge will be one day for each day of the certified enrollment period;

(B) During any period in which VA does not pay established charges to the institution of higher learning on the individual's behalf but pays a monthly housing allowance to the individual, the entitlement charge will be one day for each day of the certified enrollment period and/or interval period for which the individual receives the monthly housing allowance; or

(C) During any period in which VA does not pay established charges to the institution of higher learning on the individual's behalf or a monthly

housing allowance to the individual but makes a lump sum payment to the individual for books, supplies, equipment, and other educational costs, VA will make an entitlement charge of 1 day for every \$33 paid, with any remaining amount rounded to the nearest amount evenly divisible by \$33.

(ii) *Less than full-time pursuit.* If the individual is pursuing a program of education on a less than a full-time basis, the entitlement charge will be one of the following—

(A) During any period in which VA pays established charges to the institution of higher learning on the individual's behalf, the individual will be charged a percentage of a day for each day of the certified enrollment period determined by dividing the number of course hours the individual is pursuing by the number of course hours required for full-time pursuit (rounded to the nearest hundredth);

(B) During any period in which VA does not pay established charges to the institution of higher learning on the individual's behalf but pays a monthly housing allowance to the individual, the individual will be charged a percentage of a day for each day of the certified enrollment period and/or interval period for which the individual receives the monthly housing allowance determined by dividing the number of course hours the individual is pursuing by the number of course hours required for full-time pursuit (rounded to the nearest hundredth); or

(C) During any period in which VA does not pay established charges to the institution of higher learning on the individual's behalf or a monthly housing allowance to the individual but makes a lump sum payment to the individual for books, supplies, equipment, and other educational costs, VA will make an entitlement charge of 1 day for every \$33 paid, with any remaining amount rounded to the nearest amount evenly divisible by \$33.

(Authority: 38 U.S.C. 3313)

(2) If the individual changes his or her rate of pursuit after the beginning date of the award, VA will—

(i) Divide the certified enrollment period into separate periods of time so that the individual's rate of pursuit is constant within each period; and

(ii) Compute the rate of pursuit separately for each time period.

(c) *Individuals eligible for, or in receipt of, educational assistance other than that authorized under chapter 33.* If an individual elected 38 U.S.C. chapter 33 by relinquishing educational assistance under another program but receives educational assistance for a

program of education that is approved under the relinquished chapter but not approved under 38 U.S.C. chapter 33, VA will make a charge against entitlement equivalent to the entitlement charge—

(1) That would be made under the provisions of § 21.7076, if the individual relinquished eligibility under 38 U.S.C. chapter 30;

(2) That would be made under the provisions of § 21.7576 if the individual relinquished eligibility under 10 U.S.C. chapter 1606; or

(3) That would be made under 10 U.S.C. chapter 1607 if the individual relinquished eligibility under 10 U.S.C. chapter 1607.

(d) *No entitlement charge.* VA will not make a charge against an individual's entitlement—

(1) For an approved licensing or certification test as provided under § 21.9665; or

(Authority: 38 U.S.C. 3315)

(2) For tutorial assistance as provided under § 21.9685; or

(Authority: 38 U.S.C. 3314)

(3) For the rural relocation benefit as provided under § 21.9660; or

(Authority: 38 U.S.C. 3318)

(4) For pursuit of a course or courses when the individual—

(i) Had to discontinue the course or courses as a result of being ordered to—

(A) Active duty service under 10 U.S.C. 12301(a), 12301(d), 12301(g), 12302, or 12304; or

(B) A new duty location or assignment or to perform an increased amount of work; and

(ii) Did not receive credit or lost training time for any portion of the period of enrollment in the course or courses for which the eligible individual was pursuing to complete his or her approved educational, professional, or vocational objective as a result of having to discontinue pursuit.

(Authority: 38 U.S.C. 3312(c))

(e) *Interruption to conserve entitlement.* An individual may not interrupt a certified period of enrollment for the purpose of conserving entitlement. An educational institution may not certify a period of enrollment for a fractional part of the normal term, quarter, or semester if the individual is enrolled for the entire term, quarter, or semester. VA will make a charge against entitlement for the entire period of certified enrollment, if the individual is otherwise eligible for educational assistance, except when educational assistance is interrupted for any of the following conditions:

(1) Enrollment is terminated;

(2) The individual cancels his or her enrollment and does not negotiate an educational assistance check for any part of the certified period of enrollment;

(3) The individual interrupts his or her enrollment at the end of any term, quarter, or semester within a certified period of enrollment and does not negotiate a check for educational assistance for the succeeding term, quarter, or semester; or

(4) The individual requests interruption or cancellation for any break when a school was closed during a certified period of enrollment, and VA continued payments under an established policy based upon an Executive Order of the President or an emergency situation regardless of whether or not the individual negotiated a check for educational assistance for any part of the certified enrollment period.

(Authority: 38 U.S.C. 3323(c))

(f) *Overpayment cases.* VA will make a charge against entitlement for an overpayment only if the overpayment is discharged in bankruptcy, is waived and not recovered, or is compromised.

(1) If the overpayment is discharged in bankruptcy or is waived and not recovered, the charge against entitlement will be the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(2) If the overpayment is compromised and the compromise offer is less than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(3) If the overpayment is compromised and the compromise offer is equal to or greater than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be determined by—

(i) Subtracting from the sum paid in the compromise offer the amount attributable to interest, administrative costs of collection, court costs and marshal fees;

(ii) Subtracting the remaining amount of the overpayment balances as determined in paragraph (f)(3)(i) of this section from the amount of the original overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees);

(iii) Dividing the result obtained in paragraph (f)(3)(i) of this section from the amount of the original overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees); and

(iv) Multiplying the percentage obtained in paragraph (f)(3)(iii) of this section by the amount of entitlement otherwise chargeable for the period of the original overpayment.

(Authority: 38 U.S.C. 3034(a), 38 U.S.C. 3323(a), 3685)

## **Transfer of Entitlement to Basic Educational Assistance to Dependents**

### **§ 21.9570 Transfer of entitlement.**

An individual entitled to educational assistance under 38 U.S.C. chapter 33 based on his or her own active duty service, and who is approved by a service department to transfer entitlement, may transfer up to a total of 36 months of his or her entitlement to a dependent (or among dependents). A transferor may not transfer an amount of entitlement that is greater than the entitlement he or she has available at the time of transfer.

(a) *Application of sections in subpart P to individuals in receipt of transferred entitlement.* In addition to the rules in this section, the following sections apply to a dependent in the same manner as they apply to the individual from whom entitlement was transferred.

(1) *Definitions.* Section 21.9505—Definitions;

(Authority: 38 U.S.C. 3319)

(2) *Claims and applications.* Section 21.9510—Claims, VA's duty to assist, and time limits.

(Authority: 38 U.S.C. 3319)

(3) *Eligibility.*

(i) Section 21.9530—Eligibility time limit, paragraphs (d) and (e) only; and

(ii) Section 21.9535—Extended period of eligibility, except that extensions to dependents are subject to the transferor's right to revoke or modify transfer at any time and that VA may only extend a child's ending date to the date the child attains age 26.

(Authority: 38 U.S.C. 3319)

(4) *Entitlement.*

(i) Section 21.9550—Entitlement;

(ii) Section 21.9560—Entitlement charges.

(Authority: 38 U.S.C. 3319)

(5) *Counseling.*

(i) Section 21.9580—Counseling;

(ii) Section 21.9585—Travel expenses.

(Authority: 38 U.S.C. 3319)

(6) *Approved programs of education and courses.*

- (i) Section 21.9590—Approved programs of education and courses;
- (ii) Section 21.9600—Overcharges.

(Authority: 38 U.S.C. 3319)

(7) *Payments—Educational assistance.*

- (i) Section 21.9620—Educational assistance;
- (ii) Section 21.9625—Beginning dates, except for paragraphs (e) and (h);
- (iii) Section 21.9630—Suspension or discontinuance of payments;
- (iv) Section 21.9635—Discontinuance dates, except for paragraphs (n) and (o);
- (v) Section 21.9640—Rates of payment of educational assistance;
- (vi) Section 21.9650—Increase in educational assistance;
- (vii) Section 21.9655—Rates of supplemental educational assistance;
- (viii) Section 21.9660—Rural relocation benefit;
- (ix) Section 21.9665—Reimbursement for licensing or certification tests;
- (x) Section 21.9670—Work-study allowance;
- (xi) Section 21.9675—Conditions that result in reduced rates or no payment;
- (xii) Section 21.9680—Certifications and release of payments;
- (xiii) Section 21.9685—Tutorial assistance;
- (xiv) Section 21.9690—Nonduplication of educational assistance; and
- (xv) Section 21.9695—Overpayments, except that the dependent and transferor are jointly and severally liable for any amount of overpayment of educational assistance to the dependent.

(Authority: 38 U.S.C. 3319)

(xvi) Section 21.9700—Yellow Ribbon Program

(Authority: 38 U.S.C. 3317)

(8) *Pursuit of courses.*

- (i) Section 21.9710—Pursuit;
- (ii) Section 21.9715—Advance payment certification;
- (iii) Section 21.9720—Certification of enrollment;
- (iv) Section 21.9725—Progress and conduct;
- (v) Section 21.9730—Pursuit and verifications;
- (vi) Section 21.9735—Other required reports;
- (vii) Section 21.9740—False, late, or missing reports; and
- (viii) Section 21.9745—Reporting fee.

(Authority: 38 U.S.C. 3319)

(9) *Course assessment.*

- (i) Section 21.9750—Course; and
- (ii) Section 21.9755—Measurement of concurrent enrollments.

(Authority: 38 U.S.C. 3319)

(10) *Administrative.* § 21.9770—Administrative

(Authority: 38 U.S.C. 3319)

(b) *Eligible dependents.*

- (1) An individual transferring entitlement under this section may transfer entitlement to:
  - (i) The individual's spouse;
  - (ii) One or more of the individual's children; or
  - (iii) A combination of the individuals referred to in paragraphs (b)(1)(i) and (ii) of this section.

(2) A spouse must meet the definition of spouse in § 3.50(a).

(3) A child must meet the definition of child in § 3.57.

(4) A stepchild, who meets VA's definition of child in § 3.57 and is temporarily not living with the transferor, remains a member of the transferor's household if the actions and intentions of the stepchild and transferor establish that normal family ties have been maintained during the temporary absence.

(Authority: 38 U.S.C. 3319)

(c) *Timeframe during which an individual may transfer entitlement.* An individual approved by his or her military department to transfer entitlement may do so at any time while serving as a member of the Armed Forces, subject to the transferor's 15-year period of eligibility as provided in § 21.9530.

(Authority: 38 U.S.C. 3319)

(d) *Designating dependents; designating the amount to transfer; and period of transfer.*

- (1) An individual transferring entitlement under this section must:
  - (i) Designate the dependent or dependents to whom such entitlement is being transferred;
  - (ii) Designate the number of months of entitlement to be transferred to each dependent; and
  - (iii) Specify the beginning date and ending date of the period for which the transfer is effective for each dependent.
- (2) VA will accept the transferor's designations as shown on any document signed by the transferor that shows the information required in paragraphs (d)(1)(i) through (d)(1)(iii) of this section.

(Authority: 38 U.S.C. 3020)

(e) *Maximum months of entitlement transferable.*

(1) The maximum amount of entitlement a transferor may transfer is the lesser of:

- (i) Thirty-six months of his or her entitlement; or
- (ii) The maximum amount authorized by the Secretary of the service department concerned; or

(iii) The amount of entitlement he or she has available at the time of transfer.

(2) The transferor may transfer up to the maximum amount of transferable entitlement:

- (i) To one dependent; or
- (ii) Divided among his or her designated dependents in any manner he or she chooses.

(Authority: 38 U.S.C. 3319)

(f) *Revocation of transferred entitlement.*

(1) A transferor may revoke any unused portion of transferred entitlement at any time by submitting a written notice to both the Secretary of Veterans Affairs and the Secretary of the military department concerned that initially approved the transfer of entitlement. VA will accept a copy of the written notice addressed to the military department as sufficient written notification to VA.

(2) The revocation will be effective the later of—

- (i) The date VA receives the notice of revocation; or
- (ii) The date the military department concerned receives the notice of revocation.

(Authority: 38 U.S.C. 3319)

(g) *Modifying a transfer of entitlement.*

(1) A transferor may modify the designations he or she made under paragraph (d) of this section at any time. Any modification made will apply only with respect to unused transferred entitlement. The transferor must submit a written notice to both the Secretary of Veterans Affairs and the Secretary of the military department concerned that initially approved the transfer of entitlement. VA will accept a copy of the written notice addressed to the military department as sufficient written notification to VA.

(2) The modification will be effective the later of—

- (i) The date VA receives the notice of modification; or
- (ii) The date the military department concerned receives the notice of modification.

(Authority: 38 U.S.C. 3319)

(h) *Prohibition on treatment of transferred entitlement as marital property.* Entitlement transferred under this section may not be treated as marital property, or the asset of a marital estate, subject to division in a divorce or other civil proceeding.

(Authority: 38 U.S.C. 3319)

(i) *Entitlement charge to transferor.* VA will reduce the transferor's entitlement at the rate of 1 month of

entitlement for each month of transferred entitlement used by a dependent or dependents.

(Authority: 38 U.S.C. 3319)

(j) *Secondary school diploma (or equivalency certificate).* Children who have reached age 18 and spouses may use transferred entitlement to pursue and complete the requirements of a secondary school diploma (or equivalency certificate).

(Authority: 38 U.S.C. 3319)

(k) *Rate of payment of educational assistance.* VA will apply the rules in § 21.9640 (and § 21.9655 when applicable) to determine the educational assistance rate that would apply to the transferor. VA will pay the dependent and/or the dependent's institution of higher learning the amounts of educational assistance payable under 38 U.S.C. chapter 33 in the same manner and at the same rate as if the transferor were enrolled in the dependent's program of education, except that VA will—

(1) Exclude the transferor's kicker if the transferor is eligible for such an increase (§ 21.9650) due to his or her own eligibility under 38 U.S.C. chapter 30 or 10 U.S.C. chapter 1606; and

(2) Disregard the fact that either the transferor or the dependent is (or both are) on active duty, and pay the veteran rate to a dependent child.

(Authority: 38 U.S.C. 3319)

(l) *Transferor fails to complete required service contract that afforded participation in the transferability program.*

(1) Dependents are not eligible for transferred entitlement if the transferor fails to complete the amount of service he or she agreed to serve in the Armed Forces in order to participate in the transferability program, unless the transferor did not complete the service due to:

(i) His or her death;

(ii) A service-connected disability;

(iii) A medical condition that preexisted such service on active duty and that the Secretary of the military department concerned determines is not service-connected;

(iv) A hardship, as determined by the Secretary of the military concerned; or

(v) A physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but interfered with the individual's performance of duty, as determined by the Secretary of the military department concerned.

(2) VA will treat all payments of educational assistance to dependents as overpayments if the transferor does not

complete the required service unless the transferor does not complete the required service due to one of the reasons stated in paragraph (l)(1)(i) through (iv) of this section.

(Authority: 38 U.S.C. 3034(a), 3319)

(m) *Dependent is eligible for educational assistance under this section and is eligible for educational assistance under 38 U.S.C. chapter 33 based on his or her own service.* Dependents who are eligible for payment of educational assistance through transferred entitlement and are eligible for payment under 38 U.S.C. chapter 33 based on their own active service:

(1) May receive educational assistance payable under this section and educational assistance payable based on their own active duty service for the same course; and

(2) Are not subject to the 48 months limit on training provided for in § 21.4020 when combining transferred entitlement with their own entitlement earned under 38 U.S.C. chapter 33 as long as the only educational assistance paid is under 38 U.S.C. chapter 33. If the dependent is awarded educational assistance under another program listed in § 21.4020 (other than 38 U.S.C. chapter 33), the 48 months limit on training will apply.

(Authority: 38 U.S.C. 3034(a), 3319, 3322, 3323(a), 3695)

## Counseling

### § 21.9580 Counseling.

An individual may receive counseling from VA before beginning training and during training. VA will apply the provisions of § 21.7100 to beneficiaries under 38 U.S.C. chapter 33 in the same manner as they are applied to individuals under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3697A)

### § 21.9585 Travel expenses.

VA will not pay for any costs of travel to and from the place of counseling regardless of whether the individual requests educational and vocational counseling or whether the counseling is required.

(Authority: 38 U.S.C. 111, 3323(c))

## Approved Programs of Education and Courses

### § 21.9590 Approved programs of education and courses.

(a) Payments of educational assistance are based on pursuit of a program of education. In order to receive educational assistance under 38 U.S.C. chapter 33, an eligible individual must—

(1) Be pursuing an approved program of education;

(2) Be pursuing refresher or deficiency courses;

(3) Be pursuing other preparatory or special education or training courses necessary to enable the individual to pursue an approved program of education;

(4) Have taken an approved licensing or certification test, for which he or she is requesting reimbursement; or

(5) Be an individual who has taken a course for which the individual received tuition assistance provided under a program administered by the Secretary of a military department under 10 U.S.C. 2007(a) or (c), for which the individual is requesting educational assistance for the amount of established charges not covered by military tuition assistance.

(Authority: 38 U.S.C. 3313, 3323(a), 3689)

(b) *Approval of the selected program of education.* Subject to paragraph (a), VA will approve a program of education under 38 U.S.C. chapter 33 selected by the individual if:

(1) The program meets the definition of a program of education in § 21.9505;

(2) Except for a program consisting of a licensing or certification test, the program has an educational objective as described in § 21.7020(b)(13);

(3) The courses, subjects, or licensing or certification tests in the program are approved for VA training; and

(4) Except for a program consisting of a licensing or certification test designed to help the individual maintain employment in a vocation or profession, the individual is not already qualified for the objective of the program.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3471, 3689)

(c) *Change of program.* In determining whether an individual may change his or her selected program of education, VA will apply the provisions of § 21.4234.

(d) *Programs not authorized under 38 U.S.C. chapter 33.* If an individual elected to receive benefits under 38 U.S.C. chapter 33 by relinquishing eligibility under 38 U.S.C. chapter 30; or 10 U.S.C. chapter 1606 or 1607, and the eligible individual requests educational assistance for a program of education that is not authorized to be available to the individual under the provisions of 38 U.S.C. chapter 33, but is available under the chapter the individual relinquished, VA will provide educational assistance at the rate payable under the provisions of the relinquished chapter to the eligible individual for pursuit of any program of

education that meets the approval criteria under—

(1) 38 U.S.C. chapter 30, if the individual was eligible under that chapter;

(2) 10 U.S.C. chapter 1606, if the individual was eligible under that chapter; or

(3) 10 U.S.C. chapter 1607, if the individual was eligible under that chapter.

(Authority: Pub. L. 110–252, 122 Stat. 2377)

#### **§ 21.9600 Overcharges.**

(a) *Overcharges by educational institutions may result in the disapproval of enrollments.* VA may disapprove an institution of higher learning for further enrollments if the institution of higher learning charges or receives from an individual tuition and fees that exceed the established charges that the institution of higher learning requires from similarly circumstanced individuals enrolled in the same course.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690(a))

(b) *Overcharges by organizations or entities offering licensing or certification tests may result in disapproval of tests.* VA may disapprove an organization or entity offering a licensing or certification test when the organization or entity offering the test charges or receives from an individual fees that exceed the established fees that the organization or entity requires from similarly circumstanced individuals taking the same test.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3689(d), 3690(a))

#### **Payments—Educational Assistance**

##### **§ 21.9620 Educational assistance.**

VA will pay educational assistance for an eligible individual's pursuit of an approved program of education. The eligible individual and/or the individual's educational institution will receive payment amounts in accordance with the formulas listed in § 21.9640. The maximum amounts of educational assistance payable under 38 U.S.C. chapter 33 will be published in the "Notices" section of the **Federal Register** by the first of August of each calendar year. The maximum amounts payable may also be obtained by visiting the GI Bill Web site at <http://www.gibill.va.gov> or by calling VA's customer service department toll-free at 1–888–442–4551.

(Authority: 38 U.S.C. 3313, 3314, 3315, 3316, 3317)

##### **§ 21.9625 Beginning dates.**

VA will determine the beginning date of an award or increased award of

educational assistance under this section, but in no case will the beginning date be earlier than August 1, 2009. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable beginning dates.

(Authority: 38 U.S.C. 3313, 3316, 3323(a), 5110, 5111, 5113)

(a) *Entrance or reentrance including change of program or institution of higher learning.* When an eligible individual enters or reenters into training (including a reentrance following a change of program or institution of higher learning), the beginning date of his or her award of educational assistance will be determined as follows:

(1) *For other than a licensing or certification test.* (i) If the award is the first award of educational assistance for the program of education the eligible individual is pursuing, the beginning date will be the latest of—

(A) The date the institution of higher learning certifies under paragraph (b) or (c) of this section;

(B) One year before the date of claim as determined by § 21.1029(b);

(C) The effective date of the approval of the program of education; or

(D) One year before the date VA receives approval notice for the program of education.

(ii) If the award is the second or subsequent award of educational assistance for the program of education the eligible individual is pursuing, the effective date of the award will be the latest of—

(A) The date the institution of higher learning certifies under paragraph (b) or (c) of this section;

(B) The effective date of the approval of the program of education; or

(C) One year before the date VA receives the approval notice for the program of education.

(Authority: 38 U.S.C. 3034(a), 3313, 3316, 3323(a), 3672, 5103)

(2) *For a licensing or certification test.* VA will award educational assistance for the cost of a licensing or certification test only when the eligible individual takes such test on or after August 1, 2009—

(i) While the test is approved under 38 U.S.C. chapter 36;

(ii) While the individual is eligible for educational assistance under this subpart; and

(iii) No more than one year before the date VA receives a claim for reimbursement of the cost of the test.

(Authority: 38 U.S.C. 3034(a), 3315, 3323(a), 3452(b), 3689)

(b) *Certification for program of education that leads to a standard college degree.* (1) When the individual enrolls in a course offered by independent study or distance learning, the beginning date of the award or increased award of educational assistance will be the date the eligible individual begins pursuit of the course according to the regularly established practices of the institution of higher learning.

(2) When the individual enrolls in a resident course, the beginning date of the award or increased award of educational assistance will be the first scheduled date of classes for the term, quarter, or semester in which the eligible individual is enrolled, except as provided in paragraphs (b)(3), (b)(4), and (b)(5) of this section.

(3) When the individual enrolls in a resident course whose first scheduled class begins after the calendar week when, according to the school's academic calendar, classes are scheduled to begin for the term, quarter, or semester, the beginning date of the award or increased award of educational assistance allowance will be the actual date of the first class scheduled for that particular course.

(4) When the individual enrolls in a resident course, the beginning date of the award will be the date of reporting provided that—

(i) The published standards of the school require the eligible individual to register before reporting; and

(ii) The published standards of the school require the eligible individual to report no more than 14 days before the first scheduled date of classes for the term, quarter, or semester for which the eligible individual has registered.

(5) When the eligible individual enrolls in a resident course and the first day of classes is more than 14 days after the date of registration, the beginning date of the award or increased award of educational assistance will be the first day of classes.

(Authority: 38 U.S.C. 3313, 3316, 3323)

(c) *Certification for program of education that does not lead to a standard college degree.* (1) When an eligible individual enrolls at an institution of higher learning for a program of education that is offered in residence but that does not lead to a standard college degree, the beginning date of the award of educational assistance will be as stated in paragraph (b) of this section.

(Authority: 38 U.S.C. 3313(b), 3323)

(2) When an eligible individual enrolls at an institution of higher

learning for a program of education that is offered by correspondence, the beginning date of the award of educational assistance will be the later of—

- (i) The date the first lesson was sent, or
- (ii) The date of affirmance (as defined in § 21.7020(b)(36)).

(Authority: 38 U.S.C. 3313, 3316, 3323)

(d) *Liberalizing laws and VA issues.* When a liberalizing law or VA issue affects the beginning date of an eligible individual's award of educational assistance, the beginning date will be adjusted in accordance with the facts found, but not earlier than the effective date of the act or administrative issue.

(Authority: 38 U.S.C. 3323(c), 5113)

(e) *Correction of military records.* As determined in § 21.9530, the eligibility of a veteran may arise because the nature of the veteran's discharge or release is changed by appropriate military authority. In these cases, the beginning date of the veteran's educational assistance will be in accordance with facts found, but not earlier than the date the nature of the discharge or release was changed.

(Authority: 38 U.S.C. 3323(c))

(f) *Individuals in a penal institution.* If an eligible individual is not receiving, or is receiving a reduced rate, of educational assistance under § 21.9675 (based on incarceration in a Federal, State, or local penal institution due to a felony conviction), the rate will be increased or assistance will begin effective the earlier of the following:

- (1) The date the tuition and fees are no longer being paid under another Federal, State, or local program; or
- (2) The date the individual is released from the penal institution.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3482(g))

(g) *Increase ("kicker") based on critical skills or specialty.* If an eligible individual is entitled to an increase ("kicker") in the monthly rate of educational assistance, the effective date of that increase ("kicker") will be the later of—

- (1) The beginning date of an eligible individual's award as determined by paragraphs (a) through (e) of this section; or
- (2) The first date on which the eligible individual is entitled to the increase ("kicker") as determined by the Secretary of the military department concerned.

(Authority: 10 U.S.C. 16131(i); 38 U.S.C. 3015(d), 3316(a))

(h) *Increase in percentage of maximum amount payable based on length of active duty service requirements.* If an eligible individual is entitled to an increase in the percentage of the maximum amount of educational assistance payable as a result of meeting additional length of active duty service requirements, the effective date of that increase will be the later of—

- (1) The beginning date of the eligible individual's award as determined by paragraphs (a) through (e) of this section; or

(2) The first day of the term, quarter, or semester following the term, quarter, or semester in which the eligible individual becomes entitled to an increase in the percentage of the maximum amount payable.

(Authority: 38 U.S.C. 3311, 3313)

(i) *Spouse eligible for transferred entitlement.* If a spouse is eligible for transferred entitlement under § 21.9570, the beginning date of the award of educational assistance will be no earlier than the latest of the following dates—

- (1) The date the Secretary of the military department concerned approves the transferor to transfer entitlement;
- (2) The date the transferor completes 6 years of service in the Armed Forces;
- (3) The date the transferor specified in his or her designation of transfer; or
- (4) The date the spouse first meets the definition of spouse in § 3.50(a) of this chapter.

(Authority: 38 U.S.C. 3319)

(j) *Child eligible for transferred entitlement.* If a child is eligible for transferred entitlement under § 21.9570, the beginning date of the award of educational assistance will be no earlier than the latest of the following dates—

- (1) The date the Secretary of the service department concerned approves the transferor to transfer entitlement;
- (2) The date the transferor completes 10 years of service in the Armed Forces;
- (3) The date the transferor specified in his or her designation of transfer;
- (4) The date the child first meets the definition of child in § 3.57 of this chapter; or

- (5) Either—
  - (i) The date the child completes the requirements of a secondary school diploma (or equivalency certificate); or
  - (ii) The date the child attains age 18.

(Authority: 38 U.S.C. 3319)

#### **§ 21.9630 Suspension or discontinuance of payments.**

VA may suspend or discontinue payment of educational assistance in accordance with §§ 21.4210 through 21.4216.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690)

#### **§ 21.9635 Discontinuance dates.**

The effective date of a reduction or discontinuance of educational assistance will be as stated in this section. If more than one type of reduction or discontinuance is involved, VA will reduce or discontinue educational assistance using the earliest of the applicable dates.

(a) *Death of eligible individual.* (1) If the eligible individual receives a lump sum payment under § 21.9640(b)(1)(iii), (b)(2)(iii), (c)(1)(ii), or (c)(2)(ii) and dies before the end of the period covered by the lump sum payment, the discontinuance date of educational assistance for the purpose of that lump sum payment will be the last date of the period covered by the lump sum payment.

(2) If the institution of higher learning receives a lump sum payment for established charges on behalf of an eligible individual and the individual dies before the end of the period covered by the lump sum payment, the discontinuance date for the purpose of that lump sum payment will be the last date of the period covered by the lump sum payment. The institution of higher learning will be required to return to VA any portion of the established charges paid by VA that would normally be refunded to a similarly circumstanced individual according to the regularly established practices of the institution of higher learning.

(3) If the eligible individual receives an advance payment of the monthly housing allowance pursuant to § 21.9680(b)(2) and dies before the period covered by the advance payment ends, the discontinuance date of educational assistance shall be the last date of the period covered by the advance payment.

(4) For all other payments, if the eligible individual dies while pursuing a program of education, the discontinuance date of educational assistance will be the end of the month during which the individual last attended.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d), 3680(e))

(b) *First instance of withdrawal of course.* In the first instance of a withdrawal from a course or courses for which the eligible individual received educational assistance, VA will consider any mitigating circumstances for the withdrawal with respect to a course or courses totaling no more than six semester hours or the equivalent. In determining whether a withdrawal is the first instance of withdrawal, VA will



not consider a course or courses dropped during an institution of higher learning's drop-add period in accordance with § 21.4200(l). If mitigating circumstances are applicable, VA will terminate or reduce educational assistance effective the end of the month during which the withdrawal occurred.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a)(1))

(c) *Withdrawal or unsatisfactory completion of all courses.* (1) If the eligible individual, for reasons other than being called or ordered to active duty service, withdraws from all courses or receives all nonpunitive grades and, in either case, there are no mitigating circumstances, VA will terminate educational assistance effective the first date of the term in which the withdrawal occurs or the first date of the term for which nonpunitive grades are assigned.

(2) If the eligible individual withdraws from all courses with mitigating circumstances or withdraws from all courses for which a punitive grade is or will be assigned, VA will terminate educational assistance for—

(i) Residence training effective the last date of attendance; and

(ii) Independent study or distance learning effective on the official date of change in status under the practices of the institution of higher learning.

(3) When an eligible individual withdraws from an approved correspondence course offered by an institution of higher learning, VA will terminate educational assistance effective the date the last lesson was serviced.

(Authority: 38 U.S.C. 3323, 3680(a))

(d) *Reduction in the rate of pursuit of a program of education.* If the eligible individual reduces the rate of pursuit by withdrawing from one or more courses in a program of education but continues training in one or more courses, VA will apply the provisions of this paragraph.

(1) If the reduction in the rate of pursuit occurs other than on the first date of the term, VA will reduce the eligible individual's educational assistance effective the end of the month during which the reduction occurred when the circumstances in either paragraph (d)(1)(i) or (d)(1)(ii) of this section apply—

(i) A nonpunitive grade is assigned for the course from which the eligible individual withdraws and the withdrawal occurs with mitigating circumstances.

(ii) A punitive grade is assigned for the course from which the eligible individual withdraws.

(2) VA will reduce educational assistance effective the first date of the enrollment in which the reduction occurs when—

(i) The reduction occurs on the first date of the term; or

(ii) A nonpunitive grade is assigned for the course from which the eligible individual withdraws, and—

(A) The eligible individual does not withdraw because he or she is called to active duty service, and

(B) The withdrawal occurs without mitigating circumstances.

(3) An eligible individual enrolled in several courses within a program of education, who reduces his or her rate of pursuit by completing one or more of the courses while continuing training in others, may receive an interval payment based on the total number of enrolled courses he or she completed if the requirements of § 21.9680(b)(6) are met. If those requirements are not met, VA will reduce the eligible individual's educational assistance effective the end of the month during which the individual completed each course (or courses).

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(e) *End of course or period of enrollment.* If an eligible individual's course or period of enrollment ends, the effective date of reduction or discontinuance of the individual's award of educational assistance will be the ending date of the course or period of enrollment as certified by the institution of higher learning.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(f) *Nonpunitive grade.* (1) If an eligible individual does not officially withdraw from a particular course and the individual receives a nonpunitive grade for that course, VA will reduce the individual's educational assistance effective the first date of enrollment for the term in which the grade applies unless mitigating circumstances are found.

(2) If an eligible individual does not officially withdraw from a particular course and the individual receives a nonpunitive grade for that course, VA will reduce the individual's educational assistance effective the end of the month during which the student last attended when mitigating circumstances are found.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(g) *Discontinued by VA.* If VA discontinues payment to an eligible individual following procedures stated in § 21.4210(d) and (g), the

discontinuance date of payment of educational assistance will be—

(1) The date the Director of the Regional Processing Office of jurisdiction first suspended payments provided in § 21.4210, if the discontinuance was preceded by suspension; or

(2) The end of the month in which the decision to discontinue, made by VA under § 21.9640 or § 21.4210(d) and (g), is effective, if the Director of the Regional Processing Office of jurisdiction did not suspend payments before the discontinuance.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690)

(h) *Disapproved by State approving agency.* If a State approving agency disapproves a program of education in which an eligible individual is enrolled, the discontinuance date of payment of educational assistance will be—

(1) The date the Director of the Regional Processing Office of jurisdiction first suspended payments provided in § 21.4210 if disapproval was preceded by such a suspension; or

(2) The end of the month in which the disapproval is effective or VA receives notice of the disapproval, whichever is later, provided the Director of the Regional Processing Office of jurisdiction did not suspend payments before the disapproval.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3672(a), 3690)

(i) *Disapproval by VA.* If VA disapproves a program of education in which an eligible individual is enrolled, the discontinuance date of educational assistance will be—

(1) The date the Director of the Regional Processing Office of jurisdiction first suspended payments, as provided in § 21.4210, if such suspension preceded the disapproval; or

(2) The end of the month in which the disapproval occurred, provided that the Director of the Regional Processing Office of jurisdiction did not suspend payments before the disapproval.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3671(b), 3672(a), 3690)

(j) *Unsatisfactory progress.* If an eligible individual's progress is unsatisfactory, his or her educational assistance will be discontinued effective the earlier of the following:

(1) The end of the month during which the institution of higher learning discontinues the eligible individual's enrollment; or

(2) The end of the month during which the eligible individual's progress becomes unsatisfactory according to the institution of higher learning's regularly

established standards of progress, conduct, or attendance.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

**(k) False or misleading statements.**

Payments may not be based on false or misleading statements, claims, or reports. If educational assistance is paid as the result of an individual submitting false or misleading statements, claims, or reports, VA will apply the provisions of § 21.4006 and 21.4007 in the same manner as they apply to veterans under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690)

**(l) Conflicting interests (not waived).** If a conflict of interest exists between an officer or employee of VA and an institution of higher learning, or an officer or employee of a State approving agency and an institution of higher learning, as provided in § 21.4005, and VA does not grant a waiver, the discontinuance date of educational assistance will be 30 days after the date of the letter notifying the eligible individual of the conflicting interests.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3683)

**(m) Incarceration in prison or other penal institution due to conviction of a felony.**

(1) The provisions of this paragraph apply to an eligible individual whose educational assistance must be discontinued or who becomes restricted to payment of educational assistance at a reduced rate under § 21.9675(c) (based on incarceration in a Federal, State, or local penal institution due to a felony conviction).

(2) The reduced rate or discontinuance will be effective the latest of the following—

(i) The first day of the enrollment period for which all or part of the eligible individual's tuition and fees were paid by a Federal, State, or local program;

(ii) The first day of the enrollment period in which the eligible individual is incarcerated in prison or other penal institution; or

(iii) The beginning date of the award as determined by § 21.9625.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3482(g))

**(n) Reduction or termination due to active duty status.** (1) The discontinuance date for an eligible individual who reduces or terminates training as a result of being called or ordered to serve on active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10, or in the case of an individual serving on active duty, being ordered to a new duty

location or assignment or to perform an increased amount of work is—

(i) For established charges, the last date of the certified enrollment period,

(ii) For the monthly housing allowance, the end of the month during which the reduction or withdrawal occurred, and

(iii) For the “book stipend”, the last date of the period covered by the book stipend payment.

(2) This reduction does not apply to brief periods of active duty for training if the institution of higher learning permits absence for active duty for training without considering the individual's pursuit of a program of education to be interrupted.

(Authority: 38 U.S.C. 3313(e))

**(o) Exhaustion of entitlement.** (1) If an individual enrolled in an institution of higher learning that regularly operates on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 33, the effective discontinuance date will be the last day of the quarter or semester in which the entitlement is exhausted.

(2) If an individual enrolled in an institution of higher learning that does not regularly operate on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 33 after the individual has completed more than half of the course, the ending date will be the earlier of the following—

(i) The last day of the course, or

(ii) 12 weeks from the day the entitlement is exhausted.

(3) If an individual enrolled in an institution of higher learning that does not regularly operate on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 33 before the individual has completed more than half of the course, the effective ending date will be the date the entitlement was exhausted.

(Authority: 38 U.S.C. 3031(f), 3312, 3321)

**(p) End of period of eligibility.** If an eligible individual is enrolled in an institution of higher learning on the date of expiration of his or her period of eligibility as determined under § 21.9530, the effective ending date will be the day preceding the end of the period of eligibility.

(Authority: 38 U.S.C. 3321)

**(q) Required verifications not received after certification of enrollment.** (1) If VA does not receive the required verification of attendance in a timely manner for an eligible individual enrolled in a course or courses at an institution of higher learning in a program of education not leading to a standard college degree, VA will

terminate payments effective the last date of the last period for which verification of the eligible individual's attendance was received. If VA later receives the verification, VA will make any adjustment on the basis of the facts found.

(2) If VA does not receive verification of enrollment within 60 days of the first day of the term, quarter, semester, or course for which the advance payment was made, VA will determine the actual facts and make an adjustment, if required. If the eligible individual failed to enroll, VA will terminate the award of educational assistance effective the beginning date of the enrollment period.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

**(r) Administrative or payee error.** (1) When an administrative error or error in judgment by VA, the Department of Defense, or the Department of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, is the sole cause of an erroneous award, the award will be reduced or terminated effective the date of last payment.

(2) When a payee receives an erroneous award of educational assistance as the result of providing false information or withholding information necessary to determine eligibility to the award, the effective date of the reduction or discontinuance will be the effective date of the award, or the day before the act, whichever is later. The date of the reduction or discontinuance will not be before the last date on which the individual was entitled to payment of educational assistance.

(Authority: 38 U.S.C. 3323(c), 5112(b), 5113)

**(s) Forfeiture for fraud.** If an eligible individual must forfeit his or her educational assistance due to fraud, the ending date of payment of educational assistance will be the later of—

(1) The effective date of the award; or

(2) The day before the date of the fraudulent act.

(Authority: 38 U.S.C. 3323(c), 5112, 6103)

**(t) Forfeiture for treasonable acts or subversive activities.** If an eligible individual must forfeit his or her educational assistance due to treasonable acts or subversive activities, the ending date of payment of educational assistance will be the later of—

(1) The effective date of the award; or

(2) The day before the date the individual committed the treasonable act or subversive activities for which the individual was convicted.

(Authority: 38 U.S.C. 3323(c), 6104, 6105)

(u) *Change in law or VA issue or interpretation.* If there is a change in the applicable law or VA issue, or in VA's application of the law or issue, VA will use the provisions of § 3.114(b) of this chapter to determine the ending date of the eligible individual's educational assistance.

(Authority: 38 U.S.C. 3323(c), 5112, 5113)

(v) *Reduction following the loss of increase ("kicker") for Selected Reserve service.* If an eligible individual is entitled to an increase ("kicker") in the monthly rate of educational assistance due to service in the Selected Reserve and loses that entitlement, the effective date for the reduction in the monthly rate payable is the date that the Secretary of the military department concerned determines that the eligible individual is no longer eligible to the increase ("kicker").

(Authority: 10 U.S.C. 16131; 38 U.S.C. 3316(a))

(w) *Election to receive educational assistance allowance under another educational assistance program.* If an individual is eligible under more than one educational assistance program, VA will terminate educational assistance under 38 U.S.C. chapter 33 effective the first date for which the eligible individual elects to receive educational assistance under 10 U.S.C. chapter 1606, or 1607, or under 38 U.S.C. chapter 30, 31, 32, or 35, or the Hostage Relief Act of 1980.

(Authority: 38 U.S.C. 3322(a))

(x) *Independent study course loses accreditation.* If the eligible individual is enrolled in a course offered in whole or in part by independent study, and the course loses its accreditation (or the institution of higher learning offering the course loses its accreditation), the date of reduction or discontinuance will be the effective date of the withdrawal of accreditation by the accrediting agency.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3676, 3680A(a))

(y) *Dependent exhausts transferred entitlement.* The ending date of an award of educational assistance to a dependent who exhausts the entitlement transferred to him or her is the date he or she exhausts the entitlement.

(Authority: 38 U.S.C. 3319)

(z) *Transferor revokes transfer of entitlement.* If the transferor revokes a transfer of unused entitlement, the date of discontinuance for the dependent's entitlement is the effective date of the

revocation of transfer as determined under § 21.9570.

(Authority: 38 U.S.C. 3319)

(aa) *Transferor fails to complete additional active duty service requirement.* VA will discontinue each award of educational assistance given to a dependent, effective the first date of each such award when—

(1) The transferor fails to complete the additional active duty service requirement that afforded him or her the opportunity to transfer entitlement of educational assistance; and

(2) The military department discharges the transferor for a reason other than one of the reasons stated in § 21.9570.

(Authority: 38 U.S.C. 3319)

(bb) *Spouse with transferred entitlement and transferor divorce.* If a spouse with transferred entitlement and the transferor divorce, the date of discontinuance for the spouse's entitlement is the later of the ending date of the enrollment period or the date of the divorce.

(Authority: 38 U.S.C. 101(31), 103, 3319)

(cc) *Child with transferred entitlement marries.* If a child with transferred entitlement marries, the date of discontinuance for the child's entitlement is the later of the ending date of the enrollment period or the date the child marries.

(Authority: 38 U.S.C. 101(4), 3319)

(dd) *Stepchild with transferred entitlement no longer member of transferor's household.* If a stepchild with transferred entitlement ceases to be a member of the transferor's household, the date of discontinuance for the stepchild's discontinuance is the later of the end of the enrollment period or the date the stepchild was no longer a member of the transferor's household. See § 21.9570, Transfer of entitlement.

(Authority: 38 U.S.C. 101(4), 3319)

(ee) *Other reasons for discontinuance.* If an eligible individual's educational assistance must be discontinued for any reason other than those stated in paragraphs (a) through (dd) of this section, VA will determine the ending date of educational assistance based on the facts found.

(Authority: 38 U.S.C. 3323(c), 5112(a), 5113)

#### **§ 21.9640 Rates of payment of educational assistance.**

VA will determine the amount of educational assistance payable under 38 U.S.C. chapter 33 as provided in this section.

(a) *Percentage of maximum amounts payable.* Except as provided in

paragraph (d), VA will apply the applicable percentage of the maximum amounts payable under this section for pursuit of an approved program of education, in accordance with the following table—

Aggregate length of creditable active duty service after 09/10/01	Percentage of maximum amounts payable
At least 36 months <sup>1</sup> .....	100
At least 30 continuous days (Must be discharged due to service-connected disability)	100
At least 30 months, but less than 36 months <sup>1</sup> .....	90
At least 24 months, but less than 30 months <sup>1</sup> .....	<sup>3</sup> 80
At least 18 months, but less than 24 months <sup>2</sup> .....	<sup>3</sup> 70
At least 12 months, but less than 18 months <sup>2</sup> .....	60
At least 6 months, but less than 12 months <sup>2</sup> .....	50
At least 90 days, but less than 6 months <sup>2</sup> .....	40

<sup>1</sup> Includes entry level and skill training.

<sup>2</sup> Excludes entry level and skill training.

<sup>3</sup> If the service requirements are met at both the 80 and 70 percentage level, the maximum percentage of 70 must be applied to amounts payable.

(Authority: 38 U.S.C. 3311, 3313)

(b) *Maximum amounts payable for training at more than half-time.* An individual, other than one on active duty, who is pursuing a program of education at more than half-time (at a rate of pursuit of more than 50 percent) and who—

(1) Is enrolled at an institution of higher learning located in the United States or at a branch of such institution that is located outside the United States, may receive—

(i) A lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the lowest of—

(A) The established charges for the program of education;

(B) The maximum amount of established charges regularly charged full-time undergraduate in-State students by the public institution of higher learning having the highest rate of regularly-charged established charges in the State of the primary institution of higher learning in which the individual is enrolled or, if the individual is enrolled at a branch located outside the United States, in the State where the main campus of the institution of higher learning is located; or

(C) The lesser amount of paragraph (A) or (B) of this section, divided by the number of days in the individual's

quarter, semester, or term, as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance as provided under § 21.9550;

(ii) Except for individuals pursuing a program of education offered entirely through distance learning, a monthly housing allowance if the individual's rate of pursuit is greater than 50 percent (see § 21.9750 on measurement of rate of pursuit). The monthly housing allowance will be equal to the monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member of the military with dependents in pay grade E-5 using the ZIP code area in which all, or a majority, of the primary institution of higher learning in which the individual is enrolled is located or, if the individual is only pursuing distance learning courses at the primary institution of higher learning, the ZIP code area in which all, or a majority of the institution of higher learning in which the individual is enrolled in one or more resident courses is located, multiplied by the percentage payable to the individual based on length of service; and

(iii) An amount for books, supplies, equipment, and other educational costs (referred to as the "book stipend") payable as a lump sum for each quarter, semester, or term. The amount payable to an eligible individual with remaining entitlement is equal to—

(A) \$1,000, multiplied by

(B) The fraction that is the portion of a complete academic year under the program of education that such quarter, semester, or term constitutes.

(2) Is enrolled at an institution of higher learning not located in the United States, may receive—

(i) A lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the lowest of—

(A) The established charges for the program of education in United States dollars as determined by using the conversion rate effective the first day of the enrollment period;

(B) The average amount of established charges regularly charged full-time undergraduate in-State students by public institutions of higher learning throughout the United States during the preceding academic year; or

(C) The lesser amount of paragraph (A) or (B) of this section, divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate

which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance as provided under § 21.9550;

(ii) Except for individuals pursuing a program of education offered entirely through distance learning, a monthly housing allowance if the individual's rate of pursuit is greater than 50 percent (see § 21.9750 on measurement of rate of pursuit). The monthly housing allowance will be equal to the average monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member of the military with dependents in pay grade E-5 residing in the continental United States; and

(iii) An amount for books, supplies, equipment, and other educational costs (referred to as the "book stipend") payable as a lump sum for the certified enrollment period. The amount payable to an eligible individual with remaining entitlement is equal to—

(A) \$1,000, multiplied by

(B) The fraction that is the portion of a complete academic year under the program of education that such certified enrollment period constitutes.

(c) *Maximum amounts payable for training at half-time or less.* An individual, other than one on active duty, who is pursuing a program of education at half-time or less (at a rate of pursuit of 50 percent or less) and who—

(1) Is enrolled at an institution of higher learning located in the United States or at a branch of such institution that is located outside the United States, may receive—

(i) A lump sum amount for the established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the lowest of—

(A) The established charges that similarly circumstanced nonveterans enrolled in the program of education would be required to pay; or

(B) The maximum amount of established charges regularly charged full-time undergraduate in-State students by the public institution of higher learning having the highest rate of regularly-charged established charges in the State of the primary institution of higher learning in which the individual is enrolled or, if the individual is enrolled at a branch located outside the United States, in the State where the main campus of the institution of higher learning is located; or

(C) The lesser amount of paragraph (A) or (B) of this section, divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate

which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance as provided under § 21.9550; and

(ii) An amount for books, supplies, equipment, and other educational costs (referred to as the "book stipend") payable as a lump sum for the certified enrollment period. The amount payable to an eligible individual with remaining entitlement is equal to—

(A) \$1,000, multiplied by

(B) The fraction that is the portion of a complete academic year under the program of education that such certified enrollment period constitutes, multiplied by—

(C) The percentage equal to the individual's rate of pursuit as determined by dividing the number of course hours the individual is pursuing by the number of course hours required for full-time pursuit.

(2) Is enrolled in an institution of higher learning not located in the United States, may receive—

(i) A lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the lowest of—

(A) The established charges for the program of education in United States dollars as determined by using the conversion rate effective the first day of the enrollment period;

(B) The average amount of established charges regularly charged full-time undergraduate in-State students by public institutions of higher learning throughout the United States during the preceding academic year; or

(C) The lesser amount of paragraph (A) or (B) of this section, divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance as provided under § 21.9550; and

(ii) An amount for books, supplies, equipment, and other educational costs (referred to as the "book stipend") payable as a lump sum for the certified enrollment period. The amount payable to an eligible individual with remaining entitlement is equal to—

(A) \$1,000, multiplied by

(B) The fraction that is the portion of a complete academic year under the program of education that such certified enrollment period constitutes, multiplied by

(C) The percentage equal to the individual's rate of pursuit as determined by dividing the number of course hours the individual is pursuing

by the number of course hours required for full-time pursuit.

(d) *Amounts payable for individuals on active duty.* Individuals on active duty who are pursuing a program of education may receive a lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the lowest of—

(1) The established charges that similarly circumstanced nonveterans enrolled in the program of education would be required to pay;

(2) That portion of the established charges not covered by military tuition assistance under 10 U.S.C. 2007(a) or (b) for which the individual has stated to VA that he or she wishes to receive payment; or

(3) The lesser amount of paragraph (1) or (2) of this section, divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate, multiplied by the individual's remaining months and days of entitlement to educational assistance as provided under § 21.9550.

(e) *Publication of educational assistance rates.* VA will publish the maximum amounts payable in the "Notices" section of the **Federal Register** and on the GI Bill Web site at <http://www.gibill.va.gov> by the first of August of each calendar year.

(Authority: 38 U.S.C. 3313, 3323(c))

#### **§ 21.9645 Refund of basic contribution to chapter 30.**

(a)(1) An individual who makes an irrevocable election to receive educational assistance under this chapter by relinquishing eligibility under chapter 30 will be entitled to receive a refund of the amount of contributions he or she paid towards chapter 30, up to \$1,200, if the individual, as of the date of the individual's election, meets the requirements for entitlement to educational assistance under this chapter and meets one of the following requirements as of August 1, 2009—

(i) He or she is eligible for basic educational assistance under 38 U.S.C. chapter 30 and has remaining entitlement under that chapter;

(ii) He or she is eligible for basic educational assistance under 38 U.S.C. chapter 30 but has not used any entitlement under that chapter; or

(iii) He or she is a member of the Armed Forces who is eligible to receive educational assistance under 38 U.S.C. chapter 30 because the individual has met the requirements of § 21.7042(a) or

(b) and is making contributions as provided in § 21.7042(g).

(2) [Reserved]

(b) *Amount of refund.* The amount of any payment made under this section to the individual who made the contributions will be equal to the total amount of contributions toward basic educational assistance made by the individual as provided in § 21.7042(g), multiplied by the fraction of either—

(1) The number of months of entitlement under 38 U.S.C. chapter 30 remaining to the individual at the time of the election and the number of months, if any, of transferred entitlement under 38 U.S.C. chapter 30 that the individual revoked; or

(2) 36 months for the individual under § 21.9645(a)(iii) who is still making contributions; divided by

(3) 36 months.

(c) *Timing of Payment.* The amount payable under this section will only be paid to the individual who made the contributions as an increase to the monthly housing allowance payable under § 21.9640(b)(1)(ii) or (b)(2)(ii) at the time his or her entitlement exhausts.

(Authority: Pub. L. 110–252, Stat. 2377–2378)

#### **§ 21.9650 Increase in educational assistance.**

The Secretary of the military department concerned may increase the amount of basic educational assistance payable to an individual who has a skill or specialty in which there is a critical shortage of personnel, for which there is difficulty recruiting, or, in the case of critical units, for which there is difficulty retaining personnel, as determined by the Secretary of the military department concerned.

(a) *Chapter 33 increase ("kicker") amount.* (1) The amount of the increase is set by the Secretary of the military department concerned, but the amount of any such increase may not exceed—

(i) \$950.00 per month for full-time training; or

(ii) A percentage of the full-time training amount under paragraph (a)(i) of this section based on the individual's rate of pursuit of training.

(2) The increase ("kicker") amount payable under paragraph (a) of this section will only be paid to the individual as part of the monthly housing allowance if the individual is entitled to receive a monthly housing allowance under § 21.9650(b)(2) for that term, quarter, or semester.

(Authority: 38 U.S.C. 3316(a))

(b) *Chapter 30 increase ("kicker") amount.* (1) An individual eligible under 38 U.S.C. chapter 33 by reason of an irrevocable election under

§ 21.9520(c) who, on the date of election, was entitled to an increase ("kicker") of the amount of educational assistance under 38 U.S.C. 3015(d) remains entitled to such increase under 38 U.S.C. chapter 33.

(2) The increase ("kicker") amount is set by the Secretary of the military department concerned, but the amount of any such increase may not exceed—

(i) \$950.00 per month for full-time training; or

(ii) A percentage of the full-time training amount under paragraph (b)(2)(i) of this section based on the individual's rate of pursuit of training.

(3) The increase ("kicker") amount payable under paragraph (b) of this section will be paid to the individual as a lump sum in an amount for the entire quarter, semester, or term, as applicable, based on the monthly amount to which the individual was entitled at the time of the election of chapter 33.

(Authority: 38 U.S.C. 3015(d); Pub. L. 110–252, Stat. 2378)

(c) *Chapter 1606 increase ("kicker") amount.* (1) An individual who is eligible for educational assistance under 38 U.S.C. chapter 33 by reason of an irrevocable election under § 21.9520(c) and, on the date of election, was entitled to an increase ("kicker") of the amount of educational assistance under 10 U.S.C. 16131(i) remains entitled to such increase under 38 U.S.C. chapter 33.

(2) The increase ("kicker") amount is set by the Secretary of the military department concerned, but the amount of any such increase may not exceed—

(i) \$350.00 per month for full-time training; or

(ii) A percentage of the full-time training amount under paragraph (c)(2)(i) of this section based on the individual's rate of pursuit of training.

(3) The increase ("kicker") amount payable under paragraph (c) of this section will be paid to the individual as a lump sum in an amount for the entire quarter, semester, or term, as applicable, based on the monthly amount to which the individual was entitled at the time of the election of chapter 33.

(Authority: 10 U.S.C. 16131(i); Pub. L. 110–252, Stat. 2378)

#### **§ 21.9655 Rates of supplemental educational assistance.**

In addition to basic educational assistance, an individual who is eligible for supplemental educational assistance and entitled to it will be paid supplemental educational assistance at the rate described in this section unless a lesser rate is required by § 21.9675.

(a) *Individuals eligible for supplemental educational assistance*

under chapter 33. (1) The monthly amount of supplemental educational assistance payable to an individual whose initial eligibility for educational assistance is acquired under 38 U.S.C. chapter 33 is set by the Secretary of the military department concerned, but may not exceed \$300 per month for full-time training. Individuals pursuing training at less than full-time will receive a percentage of the amount set by the Secretary of the military department concerned based on the individual's rate of pursuit of training.

(2) The increase payable under paragraph (a) of this section will only be paid to the individual as part of the monthly housing allowance if the individual is entitled to receive a monthly housing allowance under § 21.9650(b)(2) for that term, quarter, or semester.

(Authority: 38 U.S.C. 3316)

(b) *Individuals who were eligible for supplemental educational assistance under 38 U.S.C. chapter 30.* (1) An individual who is eligible for educational assistance under 38 U.S.C. chapter 33 by reason of an irrevocable election under § 21.9520(c) and was entitled to supplemental educational assistance under subchapter III of 38 U.S.C. chapter 30 remains entitled to such additional amount under chapter 33.

(2) The amount of the increase is set by the Secretary of the military department concerned, but may not exceed \$300 per month for full-time training. Individuals pursuing training at less than full-time will receive a percentage of the amount set by the Secretary of the military department concerned based on the individual's rate of pursuit of training.

(3) The supplemental increase amount payable under paragraph (b) of this section will be paid to the individual as a lump sum in an amount for the entire quarter, semester, or term, as applicable, based on the monthly amount to which the individual was entitled at the time of the election of chapter 33.

(Authority: 38 U.S.C. 3021; Pub. L. 110–252, 122 Stat. 2378)

#### **§ 21.9660 Rural relocation benefit.**

An individual eligible for educational assistance under this chapter is entitled to receive a one-time payment of \$500 if the individual—

(1) Resides in a county (or similar entity utilized by the Bureau of the Census) with less than 7 persons per square mile (as determined by the most recent decennial Census); and

(2) Either—

(i) Physically relocates at least 500 miles in order to pursue a program of education for which the individual receives educational assistance under this chapter; or

(ii) Travels by air to physically attend an institution of higher learning for pursuit of an approved program of education under this chapter if no other land-based method of transportation is available due to an absence of roads or other infrastructure; and

(iii) Has provided documentation required in § 21.9680(c).

(Authority: 38 U.S.C. 3318)

#### **§ 21.9665 Reimbursement for licensing or certification tests.**

An eligible individual is entitled to receive reimbursement for taking one licensing or certification test. The amount of educational assistance VA will pay as reimbursement for an approved licensing or certification test taken on or after August 1, 2009, is the lesser of the following:

(a) The fee that the licensing or certification organization offering the test charges for taking the test; or

(b) \$2,000.

(Authority: 38 U.S.C. 3315)

#### **§ 21.9670 Work-study allowance.**

An eligible individual pursuing a program of education under 38 U.S.C. chapter 33 at a rate of pursuit of at least 75 percent may receive a work-study allowance in accordance with the provisions of § 21.4145.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3485)

#### **§ 21.9675 Conditions that result in reduced rates or no payment.**

The payment rates as established in §§ 21.9640 and 21.9655 will be reduced in accordance with this section whenever the circumstances described in this section arise.

(a) *Withdrawals and nonpunitive grades.* Except as provided in this paragraph, VA will not pay educational assistance for an eligible individual's pursuit of a course from which the eligible individual withdraws or receives a nonpunitive grade that is not used in computing the requirements for graduation. VA may pay educational assistance for a course from which the eligible individual withdraws or receives a nonpunitive grade if—

(1) The individual withdraws because he or she is ordered to active duty service; or

(2) There are mitigating circumstances, and

(i) The eligible individual submits a description of the mitigating circumstances in writing to VA within one year from the date VA notifies the

eligible individual that a description is needed, or at a later date if the eligible individual is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the description of the mitigating circumstances; and

(ii) The eligible individual submits evidence supporting the existence of mitigating circumstances within one year of the date VA requested the evidence, or at a later date if the eligible individual is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the evidence supporting the existence of mitigating circumstances.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(b) *No educational assistance for some incarcerated individuals.* VA will not pay educational assistance to an eligible individual who is incarcerated in a Federal, State, or local penal institution due to a felony conviction and has incurred no expenses for books, supplies, or equipment if—

(1) The individual is enrolled in a course for which there is no tuition and fees;

(2) The individual is enrolled in a course and the tuition and fees for the course are being paid in full by a Federal (other than one administered by VA), State, or local program.

(c) *Reduced educational assistance for some incarcerated individuals.* (1) VA will reduce the amount of educational assistance paid to an eligible individual who is incarcerated in a Federal, State, or local penal institution due to a felony conviction if—

(i) The individual is enrolled in a course for which the tuition and fees are paid entirely by a Federal (other than one administered by VA), State, or local program, but the individual is required to purchase books, supplies, or equipment for the course; or

(ii) The individual is enrolled in a course for which the tuition and fees are paid partially by a Federal (other than one administered by VA), State, or local program, whether or not the individual is required to purchase books, supplies, or equipment for the course.

(2) The amount of educational assistance payable for pursuit of an approved program of education by an eligible individual, as described in this paragraph, will be the lesser of the following—

(i) The amount equal to any portion of tuition and fees charged for the course that are not paid by a Federal (other than one administered by VA), State, or local program plus an amount

equal to any charges to the eligible individual for the cost of necessary books, supplies, and equipment; or

(ii) The amount of tuition and fees otherwise payable to the individual based on the individual's length of creditable service as determined in § 21.9640(a) and the individual's rate of pursuit, plus an amount equal to any charges to the eligible individual for the cost of necessary books, supplies, and equipment.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3482(g))

(d) *No educational assistance for certain enrollments.* VA will not pay educational assistance for—

(1) An enrollment in an audited course (See § 21.4252(i));

(2) A new enrollment in a course during a period when the approval has been suspended by a State approving agency or VA;

(3) An enrollment in a course by a nonmatriculated student except as provided in § 21.4252(l);

(4) An enrollment in a course at an institution of higher learning for which the individual is an official of such institution authorized to sign certificates of enrollment;

(5) A new enrollment in a course which does not meet the veteran-nonveteran ratio requirement as computed under § 21.4201; and

(6) An enrollment in a course offered under contract for which VA approval is prohibited by § 21.4252(m).

(Authority: 38 U.S.C. 501(a), 3034(a), 3323(a))

#### **§ 21.9680 Certifications and release of payments.**

(a) *Payee.* (1) VA will make payment of the appropriate amount of established charges (including top-up payments), as determined under § 21.9640, directly to the institution of higher learning as a lump-sum payment for the entire quarter, semester, or term, as applicable;

(2) VA will make all other payments to the eligible individual or a duly appointed fiduciary. VA will make direct payment to the eligible individual even if he or she is a minor.

(3) Eligible individuals are subject to the verification of enrollment provisions of § 21.9730 before VA will make a continuing payment to the eligible individual.

(4) The assignment of educational assistance is prohibited. In administering this provision, VA will apply the provisions of § 21.4146 to 38 U.S.C. chapter 33.

(Authority: 38 U.S.C. 3034(a), 3313(g), 3323(a), 3680, 5301)

(b) *Payments.*

(1) VA will pay educational assistance for an eligible individual's enrollment in an approved program (other than one seeking tuition assistance top-up, one seeking reimbursement for taking an approved licensing or certification test, or one who qualifies for an advance payment of the monthly housing allowance) only after the educational institution has certified the individual's enrollment as provided in § 21.9720 and the eligible individual has complied with any requirement for verification of enrollment as set forth in § 21.9730.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(g), 3689)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0073.)

(2) *Advance payments.* VA will apply the provisions of this section in making advance payments of the monthly housing allowance to eligible individuals.

(i) VA will make payments of the monthly housing allowance in advance when:

(A) The eligible individual has specifically requested such a payment;

(B) The individual is enrolled at a rate of pursuit greater than half-time;

(C) The institution of higher learning at which the eligible individual is accepted or enrolled has agreed to and can satisfactorily carry out the provisions of 38 U.S.C. 3680(d)(4)(B), (d)(4)(C), and (d)(5) pertaining to receipt, delivery, and return of checks, and certifications of delivery and enrollment;

(D) The Director of the VA Regional Processing Office of jurisdiction has not acted under paragraph (b)(2)(iv) of this section to prevent advance payments being made to the eligible individual's institution of higher learning;

(E) There is no evidence in the eligible individual's claim file showing that he or she is not eligible for an advance payment;

(F) The period for which the eligible individual has requested a payment either—

(1) Is preceded by an interval of nonpayment of 30 days or more; or

(2) Is the beginning of a school year that is preceded by a period of nonpayment of 30 days or more; and

(G) The institution of higher learning or the eligible individual has submitted the certification required by § 21.9715.

(ii) The amount of the advance payment to an eligible individual is the amount payable for the monthly housing allowance for the month or fraction thereof in which the term or course will begin plus the amount of the

monthly housing allowance for the following month.

(iii) VA will mail advance payments to the institution of higher learning for delivery to the eligible individual. The institution of higher learning will not deliver the advance payment check more than 30 days in advance of the first date of the enrollment period for which VA makes the advance payment.

(iv) The Director of the VA Regional Processing Office of jurisdiction may direct that advance payments not be made to individuals attending an institution of higher learning if:

(A) The institution of higher learning demonstrates an inability to comply with the requirements of paragraph (b)(2)(iii) of this section;

(B) The institution of higher learning fails to provide adequately for the safekeeping of the advance payment checks before delivery to the eligible individual or return to VA; or

(C) The Director determines, based on compelling evidence, that the institution of higher learning has demonstrated its inability to discharge its responsibilities under the advance payment program.

(Authority: 38 U.S.C. 3034, 3323, 3680)

(3) *Lump sum payments.* VA will make a lump-sum payment for the entire quarter, semester, or term:

(i) To an institution of higher learning, on behalf of an eligible individual, for the appropriate amount of established charges;

(ii) To an eligible individual for the appropriate amount for books, supplies, equipment, and other educational costs; and

(iii) To an eligible individual entitled to the \$500 rural relocation benefit.

(Authority: 38 U.S.C. 3034(a), 3313, 3318, 3323(a), 3680(f))

(4) VA will pay educational assistance for tuition assistance top-up only after the individual has submitted to VA a copy of the form(s) that the military service with jurisdiction requires for tuition assistance and that had been presented to the educational institution, covering the course or courses for which the eligible individual wants tuition assistance top-up. If the form(s) submitted do not contain the amount of tuition assistance charged to the individual, VA may delay payment until VA obtains that information from the educational institution. Examples of these forms include:

(i) DA Form 2171, Request for Tuition Assistance—Army Continuing Education System;

(ii) AF Form 1227, Authority for Tuition Assistance—Education Services Program;



(iii) NAVMC 10883, Application for Tuition Assistance, and either NAVEDTRA 1560/5, Tuition Assistance Authorization, or NAVMC (page 2), Tuition Assistance Authorization;

(iv) Department of Homeland Security, USCG CG-4147, Application for Off-Duty Assistance; and

(v) Request for Top-Up: eArmyU Program.

(Authority: 38 U.S.C. 5101(a))

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0698)

(5) VA will pay educational assistance to an eligible individual as reimbursement for taking an approved licensing or certification test only after the eligible individual has submitted to VA a copy of his or her official test results and, if not included in the results, a copy of another official form (such as a receipt or registration form) that together must include:

(i) The name of the test;

(ii) The name and address of the organization or entity issuing the license or certificate;

(iii) The date the eligible individual took the test; and

(iv) The cost of the test.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3689)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0695)

(6) *Payment for intervals and temporary school closings.* VA may authorize payment for an interval or for a temporary school closing that occurs within a certified enrollment period. If a school closing that is or may be temporary occurs during an interval, VA will apply any applicable provisions in paragraphs (6)(i) through (6)(v) of this section concerning intervals and in paragraph (6)(vi) of this section concerning temporary school closings. For the purposes of this paragraph, interval means a period without instruction between consecutive school terms, quarters, or semesters or a period without instruction between a summer term and a term, quarter, or semester. (See definitions of divisions of the school year in § 21.4200(b).)

(i) *Payment for intervals.* In determining whether a student will be paid for an interval, VA will first review the provisions of paragraph (b)(6)(ii) of this section. If none of the provisions apply, VA will review the provisions of paragraph (b)(6)(iii), (iv), and (v) of this section to determine if payments may be made for the interval. In determining the length of a summer term, VA will disregard a fraction of a week consisting

of 3 days or less, and will consider 4 days or more to be a full week.

(ii) Restrictions on payment for intervals. VA will make no payment for an interval if—

(A) The individual's rate of pursuit is half-time or less on the last day of the certified enrollment period preceding the interval;

(B) The individual is on active duty;

(C) The individual requests, prior to authorization of an award or prior to negotiating the check, that no benefits be paid for the interval period;

(D) The individual's entitlement applicable to such payment will be exhausted by receipt of such payment, and it is to the advantage of the individual not to receive payment;

(E) The interval occurs between school years at a school that is not organized on a term, quarter, or semester basis; or

(F) The individual withdraws from all courses in the term, quarter, semester, or summer session preceding the interval, or discontinues training before the scheduled start of an interval in an institution of higher learning not organized on a term, quarter, or semester basis.

(iii) *Payment for intervals between periods of enrollment at different schools.* If the individual transfers from one approved school for the purpose of enrolling in and pursuing a similar course at the second school, VA may make payments for an interval that does not exceed 30 days. If the student does not enroll in a similar course at the second school, VA may not make payments for the interval.

(iv) Payment for intervals that occur at the same school. (A) If the individual remains enrolled at the same school, VA may make payment for an interval which does not exceed 8 weeks and which occurs between:

(1) Semesters or quarters,

(2) A semester or quarter and a term that is at least as long as the interval,

(3) A semester or quarter and a summer term that is at least as long as the interval,

(4) Consecutive terms (other than semesters or quarters) provided that both terms are at least as long as the interval, or

(5) A term and summer term provided that both the term and the summer term are at least as long as the interval.

(B) If the individual remains enrolled at the same school, VA may make payment for an interval that does not exceed 30 days and that occurs between summer sessions within a summer term.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(v) Payment for intervals that occur between overlapping enrollments. (A) If

a student is enrolled in overlapping enrollment periods whether before or after an interval (either at the same or different schools), VA will determine whether the student is entitled to payment for the interval between the overlapping enrollment periods, and which dates the interval and enrollment periods will be considered to begin and end, as follows:

(1) By treating the ending date of each enrollment period as though it were the individual's last date of training before the interval,

(2) By treating the beginning date of each enrollment period as though it were the individual's first date of training after the interval,

(3) By examining the interval payment that would be made to the individual on the basis of the various combinations of beginning and ending dates, and

(4) By choosing the ending date and beginning date that result in the highest payment rate as the start and finish of the interval for VA measurement purposes.

(B) VA will not reduce the interval rate of payment as a result of training the individual may take during the interval, but VA will increase the interval rate of payment if warranted by such training.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(vi) Payment for temporary school closings. VA may authorize payment for temporary school closings that are due to emergencies (including strikes) or established policy based upon an Executive Order of the President. If a school closing that is or may be temporary occurs in whole or in part during an interval, VA will first review the provisions of paragraph (b)(6)(ii) through (v) of this section to determine if payment may be continued during the interval.

(A) If payment would not be inconsistent with the provisions of paragraph (b)(6)(ii) through (v) of this section, a determination to authorize payment for a period of a temporary school closing, or to not authorize payment if it appears that either the school closing will not be temporary or payment would not otherwise be in accord with this section, or both, will be made by:

(1) The Director of the VA Regional Processing Office of jurisdiction if:

(i) The reason for the school closing does not result in the closing of a school or schools in the jurisdiction of the Director of another VA Regional Processing Office, and

(ii) If the reason for the closing is a strike, and the strike lasts, or is anticipated to last, 30 days or less.

(2) The Director of Education Service if:

(i) The reason for the school closing results in the closing of schools in the jurisdiction of more than one Director of a VA Regional Processing Office, or

(ii) The reason for the closing is a strike, and the strike lasts, or is anticipated to last, more than 30 days.

(B) A school that disagrees with a decision made under paragraph (b)(6)(vi) of this section may request an administrative review. The review request must be submitted in writing and received by the Director of the VA Regional Processing Office of jurisdiction within one year of the date of VA's letter notifying the school of the decision. A review of the decision will include the evidence of record and any other pertinent evidence the school may wish to submit. The affirmation or reversal of the initial decision based on an administrative review is final. The review will be conducted by the—

(1) Director, Education Service, if the Director of the VA Regional Processing Office of jurisdiction made the initial decision to continue or discontinue payments; or

(2) Under Secretary for Benefits, if the Director, Education Service, made the initial decision to continue or discontinue payments.

(Authority: 38 U.S.C. 512, 3034(a), 3323(a), 3680(a))

*(c) Rural relocation benefit.*

VA will make the \$500 rural relocation benefit payment after—

(1) The educational institution has certified the individual's enrollment as provided in § 21.9680;

(2) The individual has provided—

(i) *Request for benefit.* An individual must submit a request for the rural relocation benefit in writing;

(ii) *Proof of residence.* (A) An individual must provide proof of his or her place of residence by submitting any of the following documents bearing his or her name:

(1) DD Form 214, Certification of Release or Discharge from Active Duty; or

(2) The most recent Federal income tax return; or

(3) The most recent State income tax return; or

(4) Rental/lease agreement; or

(5) Mortgage document; or

(6) Current real property assessment.

(B) An individual using entitlement granted under § 21.9570 who, because he or she resides with the transferor or, in the case of a child, a parent, cannot provide any of the documents in paragraph (c)(2)(i) of this section, may submit any document in paragraph

(c)(2)(i)(A)(2) through (6) of this section bearing the name of the transferor or, in the case of a child, a parent as proof of residence; and

(iii) *Proof of relocation.* An individual traveling by air must provide an airline receipt for travel with a departure and destination airport within reasonable distance from the home of residence and the institution of higher learning, respectively; and

(3) VA has determined that the individual resided in a county (or similar entity utilized by the Bureau of the Census) with less than seven persons per square mile based on the most recent decennial census prior to relocation, and either:

(i) If traveling by land, physically relocated at least 500 miles, confirmed by means of a commonly available internet search engine for mapping upon entering the individual's resident address provided in paragraph (c)(2) as the beginning point and the address of the institution of higher learning as the ending point; or

(ii) If traveling by air, was unable to travel to the institution of higher learning by land due to the absence of road or other infrastructure.

(Authority: 38 U.S.C. 3318)

(d) *Apportionments prohibited.* VA will not apportion educational assistance.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(e) *Accrued benefits.* Educational assistance remaining due and unpaid on the date of the individual's death is payable under the provisions of § 3.1000 of this chapter.

(Authority: 38 U.S.C. 5121)

**§ 21.9685 Tutorial assistance.**

(a) An individual who is eligible to receive benefits under 38 U.S.C. chapter 33 may receive additional monetary assistance for tutorial services. VA will pay the individual this assistance if the tutorial assistance is necessary for the eligible individual to complete his or her program of education successfully, and the individual—

(1) Is enrolled in and pursuing a postsecondary program of education at a rate of pursuit of at least 50 percent at an institution of higher learning; and

(2) The professor or other person teaching, leading, or giving the course certifies that—

(i) Tutorial assistance is essential to correct a deficiency of the individual in such course; and

(ii) The course is required as part of, or is prerequisite or indispensable to the satisfactory pursuit of, an approved program of education.

(b) *Limits on tutorial assistance.* (1) VA will authorize the cost of tutorial assistance in an amount not to exceed \$100 per month.

(2) The total amount of all tutorial assistance provided under this section will not exceed \$1,200.

(Authority: 38 U.S.C. 3034(a), 3314, 3323(a), 3492)

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900–0171)

**§ 21.9690 Nonduplication of educational assistance.**

(a) Except for receipt of a Montgomery GI Bill—Active Duty kicker provided under 38 U.S.C. 3015(d) or a Montgomery GI Bill—Selected Reserve kicker provided under 10 U.S.C. 16131(i), an eligible individual is barred from receiving educational assistance under 38 U.S.C. chapter 33 concurrently with educational assistance provided under—

(1) 10 U.S.C. 1606 (Montgomery GI Bill—Selected Reserve);

(2) 10 U.S.C. 1607 (Reserve

Educational Assistance Program);

(3) 10 U.S.C. 107 (Section 901, Educational Assistance Test Program);

(4) 38 U.S.C. 30 (Montgomery GI Bill—Active Duty);

(5) 38 U.S.C. 31 (Vocational Rehabilitation and Employment Program);

(6) 38 U.S.C. 32 (Post-Vietnam Era Veterans' Educational Assistance);

(7) 38 U.S.C. 35 (Survivors' and Dependents' Educational Assistance); or

(8) Hostage Relief Act of 1980.

(Authority: 38 U.S.C. 3034(a), 3322, 3323(a), 3681; section 901, Pub. L. 96–342)

(b) *Election of benefits.* An individual who is eligible for educational assistance under more than one program listed in paragraph (a) of this section must elect in writing which benefit he or she wishes to receive. The eligible individual may make a new election at any time, but may not elect more than once in a calendar month.

(Authority: 38 U.S.C. 3034(a), 3322, 3323(a), 3681)

(c) *Nonduplication—Federal program.* Payment of educational assistance is prohibited to an otherwise eligible reservist—

(1) For a unit course or courses that are being paid for entirely or partly by the Armed Forces during any period in which he or she is on active duty service; or

(2) For a unit course or courses that are being paid for entirely or partly by the United States under the Government Employees' Training Act.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3681)

#### **§ 21.9695 Overpayments.**

(a) *Prevention of overpayments.* In administering educational assistance payable under 38 U.S.C. chapter 33, VA will apply the provisions of §§ 21.4008 and 21.4009 to eligible individuals and, when appropriate, to institutions of higher learning.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690(b))

(b) *Liability for overpayments.* (1) An overpayment of educational assistance paid to an eligible individual, or paid to the institution of higher learning on behalf of the eligible individual, constitutes a liability of that individual unless—

(i) The overpayment was waived as provided in §§ 1.957 and 1.962 of this chapter, or

(ii) The overpayment results from an administrative error or an error in judgment. See § 21.9635(r).

(2) The amount of the overpayment of educational assistance paid to the eligible individual, or paid to the institution of higher learning on behalf of the eligible individual, constitutes a liability of the institution of higher learning if VA determines that the overpayment is the result of willful or negligent—

(i) False certification by the institution of higher learning; or

(ii) Failure to certify excessive absences from a course, discontinuance of a course, or interruption of a course by the eligible individual.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3685)

(ii) In determining whether an overpayment should be recovered from an institution of higher learning, VA will apply the provisions of § 21.4009 (except paragraph (a)(1)) to overpayments of educational assistance under 38 U.S.C. chapter 33.

(3) VA will determine the amount of an overpayment as follows—

(i) For an individual who does not complete all courses in the certified period of enrollment for which he or she received payment, and who does not substantiate mitigating circumstances for not completing such enrollment, VA will establish an overpayment equal to the amount of all educational assistance paid for that certified period of enrollment.

(ii) For an individual who does not complete all courses in the certified period of enrollment, but who substantiates mitigating circumstances for not completing such courses, VA will prorate the amount of educational assistance to which he or she is entitled.

(A) VA will determine the prorated amount of the established charges by dividing the amount the individual was paid by the number of days in the certified enrollment period, and multiplying the result by the number of days from the beginning date of the enrollment period through the last date of attendance. The result of this calculation will equal the amount the individual is due. The difference between the amount of educational assistance paid and the amount of educational assistance the individual is due will be established as an overpayment.

(B) VA will determine the prorated amount of the monthly housing allowance by determining the amount the individual was entitled to while enrolled and subtracting that amount from the total amount paid. The difference between the amount of the monthly housing allowance paid and the amount of the monthly housing allowance the individual is due will be established as an overpayment.

(C) Individuals who have substantiated mitigating circumstances will not be charged an overpayment for the lump sum payment for books, supplies, equipment, and other educational costs (“book stipend”).

(Authority: 38 U.S.C. 3034(a), 3323, 3685, 5302)

#### **§ 21.9700 Yellow Ribbon Program.**

(a) *Establishment.* Pursuant to 38 U.S.C. 3317, there is established the “Yellow Ribbon G.I. Education Enhancement Program”, known as the “Yellow Ribbon Program,” that permits an institution of higher learning (IHL), at the IHL’s option, to enter into an agreement with VA to allow the two parties to provide matching funds to cover a portion of the outstanding amount of established charges not covered under any other provision of 38 U.S.C. chapter 33.

(b) *Eligible individuals.* This program is only available to individuals entitled to the 100 percent educational assistance rate (based on service requirements) as shown in the chart in § 21.9640(a) or to their designated dependents using entitlement transferred under § 21.9570, who are pursuing training at an IHL located in the United States or at a branch of such IHL that is located outside the United States.

(c) *Agreements.* VA will enter into an agreement with an IHL located in the United States seeking to participate in the Yellow Ribbon Program based on a general agreement format developed by VA in which the IHL must agree to the following—

(1) Provide contributions for the entire academic year specified in the agreement to eligible individuals who apply for such program at that institution (in a manner prescribed by the institution) on a first-come-first-served basis, regardless of the rate at which the individual is pursuing training (*i.e.*, full-time versus less than full-time), in any given academic year;

(2) Make contributions toward the program on behalf of the individual in the form of a waiver;

(3) State the maximum number of individuals for whom contributions will be made in any given academic year; and

(4) Waive the same percentage of unmet established charges for all eligible individuals in any given academic year.

(d) *Matching Contributions.* VA will match each dollar waived by the school; however, the combined amount of contributions under the Yellow Ribbon Program may not exceed the remaining amount of established charges not covered under any other provision of 38 U.S.C. chapter 33.

(e) *Outreach.* The most current list of colleges and universities participating in the Yellow Ribbon Program will be available at VA’s GI Bill Web site at <http://www.gibill.va.gov>. The list will include specific information on each school’s agreement with VA.

(Authority: 38 U.S.C. 3317)

#### **Pursuit of Courses**

##### **§ 21.9710 Pursuit.**

Except for an eligible individual seeking tuition assistance top-up or reimbursement for taking an approved licensing or certification test, an individual’s educational assistance depends upon his or her pursuit of a program of education. Verification of this pursuit is accomplished by various certifications.

(Authority: 38 U.S.C. 3323(c))

##### **§ 21.9715 Advance payment certification.**

All certifications required by this section shall be in a form specified by the Secretary and shall contain such information as specified by the Secretary. An advance payment under this chapter is only permissible to an individual whose rate of pursuit is greater than half-time, and who is entitled to the monthly housing allowance as provided in § 21.9640(b)(1)(ii) or (b)(2)(ii).

(a) *Certification needed before an advance payment can be made.* In order for an individual to receive an advance payment of the monthly housing allowance, an application or other

document must be signed by the individual or the enrollment certification must be signed by an authorized official of the institution of higher learning.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d))

(b) *Advance payments.* All verifications required by this paragraph shall be in a form specified by the Secretary and shall contain such information as specified by the Secretary.

(1) For each eligible individual receiving an advance payment, an institution of higher learning must—

(i) Verify enrollment for the individual; and

(ii) Verify the delivery of the advance payment check to the individual.

(2) Once the institution of higher learning has initially verified the enrollment of the individual, the individual, not the institution of higher learning, must make subsequent verifications in order to release further payment for that enrollment as provided in § 21.9730.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d))

#### **§ 21.9720 Certification of enrollment.**

Except as stated in § 21.9680, an institution of higher learning must certify an eligible individual's enrollment before he or she may receive educational assistance.

(a) *Institutions of higher learning must certify most enrollments.* VA does not, as a condition of payment of tuition assistance top-up or advance payment, require institutions of higher learning to certify the enrollments of eligible individuals who either are seeking tuition assistance top-up or, in the cases described in § 21.9715, are seeking an advance payment. VA does not require organizations or entities offering a licensing or certification test to certify that the eligible individual took the test. In all other cases, the institution of higher learning must certify the eligible individual's enrollment before he or she may receive educational assistance. This certification must be in a form specified by the Secretary and contain such information as specified by the Secretary.

(Authority: 38 U.S.C. 3014(b), 3031, 3034(a), 3323(a), 3482(g), 3680, 3687, 3689, 5101(a))

(b) *Length of the enrollment period covered by the enrollment certification.*

(1) Institutions of higher learning organized on a term, quarter, or semester basis generally will report enrollment for the term, quarter, semester, ordinary school year, or

ordinary school year plus summer term. If the certification covers two or more terms, the institution of higher learning will report each term, quarter, or semester separately.

(2) Institutions of higher learning organized on a year-round basis will report enrollment for the length of the course. The certification will include a report of the dates during which the institution of higher learning closes for any intervals designated in its approval data as breaks between school years.

(3) When an eligible individual enrolls in a distance learning program leading to a standard college degree, the institution of higher learning's certification will include—

(i) The enrollment date; and  
(ii) The ending date for the period being certified. If the institution of higher learning has no prescribed maximum time for completion, the certification must include an ending date based on the educational institution's estimate for completion.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3684)  
(Approved by the Office of Management and Budget under control number 2900–0073)

#### **§ 21.9725 Progress and conduct.**

(a) *Satisfactory pursuit of program.* In order to receive payments of educational assistance under 38 U.S.C. chapter 33 for pursuit of a program of education, an individual must maintain satisfactory progress. VA will discontinue payments of educational assistance if the individual does not maintain satisfactory progress. Progress is unsatisfactory if the individual does not satisfactorily progress according to the regularly prescribed standards of the institution of higher education he or she is attending.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

(b) *Satisfactory conduct.* In order to receive educational assistance for pursuit of a program of education, an individual must maintain satisfactory conduct according to the regularly prescribed standards and practices of the institution of higher learning in which he or she is enrolled. If the individual will no longer be retained as a student or will not be readmitted as a student by the institution of higher learning in which he or she is enrolled, VA will discontinue educational assistance, unless further development establishes that the institution of higher learning's action is wrongfully retaliatory in nature.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

(c) *Satisfactory attendance.* In order to receive educational assistance for pursuit of a program of education, an

individual must maintain satisfactory attendance. VA will discontinue educational assistance if the individual does not maintain satisfactory attendance. Attendance is unsatisfactory if the individual does not attend according to the regularly prescribed standards of the institution of higher learning in which he or she is enrolled.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

(d) *Reentrance after discontinuance.*

(1) An eligible individual may be reentered following discontinuance because of unsatisfactory attendance, conduct, or progress when either:

(i) The individual resumes enrollment at the same institution of higher learning in the same program of education and the institution of higher learning has both approved the individual's reenrollment and certified it to VA; or

(ii) VA determines that—

(A) The cause of the unsatisfactory attendance, conduct or progress has been removed, and

(B) The program that the individual now proposes to pursue is suitable to his or her aptitudes, interests, and abilities.

(2) Reentrance may be for the same program, a revised program, or an entirely different program depending on the cause of the discontinuance and the removal of that cause.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

#### **§ 21.9730 Pursuit and verifications.**

Except as provided in this section under paragraph (a), an individual receiving a monthly housing allowance must submit verification to VA each month of his or her enrollment during the period for which the individual is to be paid. This verification shall be in a form prescribed by the Secretary.

(a) *Exceptions to the monthly verification requirement.* An individual does not have to submit a monthly verification as described in the introductory text of this section when the individual—

(1) Is enrolled in a correspondence course;

(2) Is not eligible for the monthly housing allowance for the enrollment period; or

(3) Has received an advance payment for the training completed during a month.

(b) *Items to be reported on all monthly verifications.* (1) The monthly verification for all eligible individuals will include a report on the following items when applicable:

(i) Continued enrollment in and actual pursuit of the course;

(ii) The individual's unsatisfactory conduct, progress, or attendance;

(iii) The date of interruption or termination of training;

(iv) Changes in the number of credit hours or in the number of clock hours of attendance other than those described in § 21.9735(a);

(v) Nonpunitive grades; and

(vi) Any other changes or modifications in the course as certified at enrollment.

(2) The verification of enrollment must—

(i) Contain the information required for release of payment;

(ii) If required or permitted by the Secretary to be submitted on paper, be signed by the eligible individual on or after the final date of the reporting period, or if permitted by the Secretary to be submitted by telephone or through VA's Web site in a manner designated by the Secretary, be submitted in the form and manner prescribed by the Secretary on or after the final date of the reporting period; and

(iii) If submitted on paper, clearly show the date on which it was signed.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3684) (The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900-0465.)

#### **§ 21.9735 Other required reports.**

VA will apply the provisions of § 21.7156 to individuals and institutions of higher learning under 38 U.S.C. chapter 33 as those provisions are applied to veterans and educational institutions under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3034(a), 3323(a))

#### **§ 21.9740 False, late, or missing reports.**

(a) *Eligible individual.* Payments may not be based on false or misleading statements, claims or reports. VA will apply the provisions of §§ 21.4006 and 21.4007 to any individual who submits false or misleading claims, statements, or reports in connection with benefits payable under 38 U.S.C. chapter 33 in the same manner as they are applied to people who make similar false or misleading claims for benefits payable under 38 U.S.C. chapter 36.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680, 3690, 6103)

(b) *Institution of higher learning.* (1) VA may hold an institution of higher learning liable for overpayments that result from the institution of higher learning's willful or negligent failure to report excessive absences from a course, discontinuance of a course, or interruption of a course by an individual or from willful or negligent false certification by the institution of higher learning. See § 21.9695(b).

(2) If an institution of higher learning willfully and knowingly submits a false report or certification, VA may disapprove that institution of higher learning's courses for further enrollments and may discontinue educational assistance to eligible individuals already enrolled. In doing so, VA will apply §§ 21.4210 through 21.4216.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690)

#### **§ 21.9745 Reporting fee.**

In determining the amount of the reporting fee payable to institutions of higher learning for furnishing required reports, VA will apply the provisions of § 21.4206 in the same manner as they are applied in the administration of 38 U.S.C. chapter 36.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3684)

#### **Course Assessment**

##### **§ 21.9750 Course measurement.**

VA will calculate an individual's rate of pursuit of an approved program of education during the individual's period of enrollment as follows.

(a) *Measurement of courses leading to an undergraduate college degree.* (1) If the courses are measured in credit hours, then the number of credit hours the individual is taking in a term, quarter, or semester will be divided by the minimum number of credit hours considered to be full-time pursuit in a term, quarter, or semester at the institution of higher learning as provided in paragraph (a)(2) of this section. The resulting percentage will be the individual's rate of pursuit. For the purpose of this chapter, VA will consider any rate of pursuit higher than 50 percent to be more than half-time training.

(2) Fourteen credit hours are full-time unless the institution of higher learning certifies that all undergraduate students enrolled for 13 credit hours, or for 12 credit hours, are charged full-time tuition or are considered full-time for other administrative purposes.

(b) *Measurement of courses not leading to a standard college degree.* Courses not leading to a standard college degree may be measured on either a clock-hour basis, or a credit-hour basis, or a combination of both. VA must determine the proper basis for measurement by considering whether the courses are accredited, whether the course could be credited toward a standard college degree, and whether the course is offered on a standard quarter or semester-hour basis. If credit-hour measurement is appropriate, VA should determine the individual's rate of pursuit in the same manner as a

course leading to a standard undergraduate degree as described in paragraph (a) of this section. If it is not appropriate to measure an individual's enrollment on a credit-hour basis, VA will measure the enrollment on a clock-hour basis as described in paragraph (b)(1) of this section. If the individual's enrollment includes a combination of credit-hour and clock-hour courses at the same institution of higher learning, the institution of higher learning should indicate the basis for full-time training. VA will use the rate of pursuit more favorable to the individual after measuring all of the individual's courses by applying the formulas in § 21.9755 to convert clock-hours to credit-hours and credit-hours to clock-hours, and comparing the results.

(1) *Clock-hour measurement.* If VA concludes that the courses in which an eligible individual is enrolled do not qualify for credit-hour measurement, VA will measure those courses as follows:

(i) If shop practice is an integral part of the course at the institution of higher learning, full-time training will be 22 clock hours (or more) of attendance per week, with not more than 2½ hours rest period allowance; or

(ii) If the majority of the course consists of theory and class instruction, full-time training is 18 clock hours (or more) of net instruction per week.

(2) To determine the rate of pursuit, divide the number of clock hours per week the individual will be in attendance by the number of clock hours per week for full-time pursuit. The resulting percentage will be the individual's rate of pursuit. For the purpose of this chapter, VA will consider any rate of pursuit higher than 50 percent to be more than half-time training.

(c) In administering benefits payable for approved programs under 38 U.S.C. chapter 33, VA will also apply the following sections. References in these sections to § 21.4270 should be deemed to refer to § 21.9750:

(1) Section 21.4272 (except paragraph (d))—Collegiate course measurement;

(2) Section 21.4273 (except those portions of paragraphs (a)(2) and (b) specifying training times should be deemed to specify a rate of pursuit)—Collegiate graduate;

(3) Section 21.4274—Law courses; and

(4) Section 21.4275—Practical training courses; measurement.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3688)

(d) *High school courses.* If an individual using transferred entitlement is eligible for pursuit of the

requirements of a secondary school diploma or equivalency certificate, VA will determine the rate of pursuit as follows:

(1) If an individual is pursuing high school courses at a rate that would result in an accredited high school diploma in four ordinary school years, VA considers him or her to be enrolled full-time; or

(2) If an individual is pursuing a secondary school diploma or equivalency certificate other than as in paragraph (d)(1) of this section, VA will consider full-time enrollment to be 18 clock hours of net instruction per week, four units per year, or the equivalent. (For the purpose of this paragraph, a unit is not less than one hundred and twenty 60-minute hours or the equivalent of study in any subject in one academic year.) VA will consider an individual's enrollment in more than 9 clock hours per week, or more than two units per year or the equivalent, to be equal a rate of pursuit of more than 50 percent for the purpose of this chapter. (Authority: 38 U.S.C. 3319(h))

**§ 21.9755 Measurement of concurrent enrollments.**

(a) *Conversion of units of measurement required.* Where an eligible individual enrolls concurrently in courses offered by two schools and the standards for the measurement of the courses pursued concurrently in the two schools are different, VA will measure the individual's enrollment by converting the units of measurement for courses in the second school to their equivalent in units of measurement required for the courses in the program of education that the eligible individual is pursuing at the primary institution. This conversion will be accomplished as follows:

(1) If VA measures the courses at the primary institution on a credit-hour basis (including a course which does not lead to a standard college degree, which is being measured on a credit-hour basis), and VA measures the courses at the second school on a clock-hour basis, the clock hours will be converted to credit hours.

(2) If VA measures the courses pursued at the primary institution on a clock-hour basis, and VA measures the

courses pursued at the second school on a credit-hour basis, VA will convert the credit hours to clock hours to determine the eligible individual's rate of pursuit.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3688)

(3) If VA measures the courses pursued at the primary institution on a clock-hour basis, and

(i) VA measures the courses pursued at the second school on a mixed basis, the courses pursued at the second school that VA can measure on credit-hour basis for at least one program at the second school will be converted to clock hours and the resulting clock hours added to determine the eligible individual's rate of pursuit; or

(ii) VA measures the courses pursued at the second school on a credit-hour basis, VA will convert the credit hours to clock hours to determine the eligible individual's rate of pursuit.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3688)

(b) *Conversion of clock hours to credit hours.* If the provisions of paragraph (a) of this section require VA to convert clock hours to credit hours, it will do so by—

(1) Dividing the number of credit hours which VA considers to be full-time at the institution of higher learning whose courses are measured on a credit-hour basis by the number of clock hours which are full-time at the institution of higher learning whose courses are measured on a clock-hour basis; and

(2) Multiplying each clock hour of attendance by the decimal determined in paragraph (b)(1) of this section. VA will drop all fractional hours.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3688)

(c) *Conversion of credit hours to clock hours.* If the provisions of paragraph (a) of this section require VA to convert credit hours to clock hours, it will do so by—

(1) Dividing the number of clock hours which VA considers to be full-time at the institution of higher learning whose courses are measured on a clock-hour basis by the number of credit hours which are full-time at the institution of higher learning whose courses are measured on a credit-hour basis; and

(2) Multiplying each credit hour by the number determined in paragraph (c)(1) of this section. VA will drop all fractional hours.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3688)

(d) *Both courses measured on a credit-hour basis or both courses measured on a clock-hour basis.* If VA measures the courses pursued at both institutions on a credit-hour basis or on a clock-hour basis, VA will measure the veteran's enrollment by adding together the units of measurement for the courses at the second school and the units of measurement for the courses at the primary institution. The standard for full-time will be the full-time standard for the courses at the primary institution.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3688)

**Approval of Courses**

**§ 21.9765 Course approval.**

VA may provide educational assistance for pursuit of a course or courses at an institution of higher learning that is approved under 38 U.S.C. chapter 30 in accordance with §§ 21.7220 and 21.7222.

(Authority: 38 U.S.C. 3034(a), 3313(b), 3323(a))

**Administrative**

**§ 21.9770 Administrative.**

In administering chapter 33, VA will apply the sections noted in paragraphs (a) through (f) of this section. For the purpose of application, the term "veteran" as used in these sections is deemed to mean "an eligible individual under 38 U.S.C. chapter 33," and the term "38 U.S.C. chapter 30" as used in these sections is deemed to mean "38 U.S.C. chapter 33".

(a) Section 21.7301—Delegations of authority;

(b) Section 21.7302—Finality of decisions;

(c) Section 21.7303—Revision of decisions;

(d) Section 21.7305—Conflicting interests;

(e) Section 21.7307—Examination of records; and

(f) Section 21.7310—Civil rights.

(Authority: 38 U.S.C. 511, 512(a), 3034(a), 3323(a), 3690, 3696)

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